

U.S. Securities and Exchange Commission Staff Response
to the Committee of European Securities Regulators (CESR) Survey
regarding Enforcement Aspects of GAAP Equivalence

March 10, 2005

The following information contains the questions of the CESR request for information, numbered and highlighted in bold type, accompanied by answers developed by the staff of the US Securities and Exchange Commission (SEC staff).

Question 1 – Definition and purpose of enforcement

What is the definition and purpose of enforcement of compliance with the relevant GAAP in your country? Where is this defined?

Enforcement as the term is used in the context of the U.S. federal securities laws and SEC regulations implies the possibility of sanctions or other remedial actions against a company, auditors, and responsible individuals and is a term that we would more commonly apply to the investigation and prosecution activities of the SEC's Enforcement Division. The Commission's Enforcement Division conducts investigations into possible violations of the federal securities laws, and when authorized by the Commission, files the Commission's civil suits in the federal courts as well as in administrative proceedings. Investigative actions of the Enforcement Division can be initiated at any time when there is a suspected violation of the US securities laws. The Commission can institute other proceedings as needed.

We understand that the term "enforcement" used in CESR's definition or context, as evidenced in CESR Enforcement Principles and the questionnaire, would encompass a much broader range of activities. As defined by CESR, activities to enforce compliance with US GAAP would include the proactive and reactive reviews of issuer filings that are carried out in the SEC's Divisions of Corporation Finance and Investment Management, as well as the accounting consultations relating to issuer disclosure documents and development of accounting interpretive guidance that take place in the Office of the Chief Accountant. CESR's definition would also include the investigative and prosecutorial actions of the SEC Enforcement Division and other SEC offices. In responding to this questionnaire, our use of the term "enforcement" in lower case will be indicative of the broader definition of enforcement as contemplated in CESR's documents. In cases where our use of the term "enforcement" relates specifically to investigative and prosecutorial activities of the SEC, we will use the term capitalized and identified as "Enforcement Division."

The SEC's Divisions of Corporation Finance and Investment Management staff regularly review issuer filings of all types for the purpose of improving disclosure to investors, including clear explanations of accounting policies, financial events and conditions, and proper application of US GAAP. (The SEC's Division of Investment Management reviews the annual and periodic reports and other filings of registered investment companies such as mutual funds and other pooled investment entities and public utility holding companies.)

Through these review and other enforcement activities, the staff seeks to ensure that investors are provided with material information that is of high quality and to deter and punish fraud and misrepresentation related to the public offering, trading, voting and tendering of securities. The SEC's enforcement of compliance with US GAAP takes place within the context of the SEC's enforcement of the United States federal securities laws and the related SEC regulations prescribing full and fair disclosure to investors. There are many components to enforcement of financial disclosure in the United States, including the proactive review of issuer filings and requests to improve or correct information supplied in filings; the development and issuance of interpretive advice regarding accounting and disclosure; and, where necessary, actions initiated by the Enforcement Division, to deter violations and bring about remedial conduct. The specific laws defining issuer obligations and the SEC's mandate are listed in the answer to question 2.

The purpose of the SEC's comprehensive reviews of public company financial statements (and accompanying financial and non-financial disclosures), as discussed in the "Full Disclosure" section of the SEC's 2003 Annual Report (beginning on page 61), is to monitor and enhance compliance with disclosure and financial statement requirements. These requirements emanate from GAAP and from the US federal securities laws and related SEC regulations. As discussed in the SEC's 2004-2009 Strategic Plan (beginning on page 30), the SEC works both to enforce the laws and promote compliance. A vigorous disclosure review program helps prevent violations by shining a spotlight on an issuer's business and financial condition. Both the SEC Annual Report and the 2004-2009 Strategic Plan are available on the SEC's website, www.sec.gov. For purposes of brevity, these documents are not attached here as they may readily be downloaded from the website page <http://www.sec.gov/about.shtml>.

It should also be noted that the SEC's responsibilities include the establishment of US GAAP for public companies. Since 1973, it has looked to the Financial Accounting Standards Board (FASB) as the authorized body to establish US accounting standards. On April 25, 2003, the SEC reaffirmed the FASB's status as authorized to establish GAAP in accordance with Section 108 of the Sarbanes-Oxley Act of 2002. Details of this action may be found in Release No. 33-8221 and the related press release on the SEC website at <http://www.sec.gov/news/press/2003-53.htm>.

Question 2 – Responsible enforcement body

Who has (have) the ultimate responsibility for enforcement of compliance with relevant GAAP in your country and what is the legal basis for your framework (e.g. act, executive order, other)?

The SEC enforces compliance with US GAAP in the financial statements of public companies. Following the U.S. stock market crash of 1929, Congress passed the Securities Act of 1933 and the Securities Exchange Act of 1934, which established the U.S. Securities and Exchange Commission to enforce the new securities laws and regulatory scheme, promote stability in the markets, and protect investors. Listed below are other major laws forming the legal basis for the Commission's regulations and activities. Descriptions of the securities laws and additional information on related SEC regulations and activities involved are available on the SEC website under "Laws and Regulations" and "What We Do."

Public Utility Holding Company Act of 1935

Investment Company Act of 1940

Investment Advisers Act of 1940

The Securities Investors Protection Act of 1970

National Securities Markets Improvement Act of 1996

Gramm-Leach-Bliley Act of 1999

Commodity Futures Modernization Act of 2000

Sarbanes-Oxley Act of 2002

In implementing these laws, the SEC is charged with administering and enforcing requirements imposed on public companies to disclose to the public, at the time of an offering and on a periodic basis thereafter, meaningful financial information so that investors may judge for themselves whether or not a company's securities are a sound investment. In this connection, public company issuers are responsible for preparing books, records, and accounts and financial statements in accordance with US GAAP and must certify in their annual and quarterly filings with the SEC that this has been done. Issuers are required to have their financial statements audited by independent auditors and to furnish the audit reports as part of their SEC filings. Under Sarbanes-Oxley Act Section 302, issuers must certify in each annual or quarterly report that the financial statements

fairly present in all material respects the financial condition and results of operations of the issuer. Issuers are also required to provide certifications regarding internal controls over financial reporting. Further details regarding these requirements are contained in SEC regulations adopted pursuant to the laws listed above.

Within the SEC, the Divisions of Corporation Finance and Investment Management review corporate issuer filings (on both a proactive and a reactive basis as described in CESR Enforcement Principles) and communicate with issuers regarding incorrect, questionable or incomplete data or application of US GAAP. The Division of Investment Management reviews the filings of investment companies and other pooled investment entities and public utility holding companies. Under Section 408 of the Sarbanes-Oxley Act, the SEC's staff is required to review the disclosures made by reporting issuers at least once every 3 years. These reviews have the purpose of improving public disclosure as well as promoting the correct application of GAAP. Once it has completed its review, the staff communicates with issuers regarding incorrect, questionable or incomplete data or application of GAAP. In cases where a misapplication of GAAP and material misstatement occurs, the financial statements are in error and correction is requested by restatement. In cases where disclosure improvements of a less material nature are determined to be needed, correction may be done prospectively. The Divisions of Corporation Finance and Investment Management may also refer cases to the SEC Enforcement Division.

The SEC Enforcement Division conducts investigations into possible violations of the federal securities laws, and prosecutes the Commission's civil suits in the federal courts as well as in its administrative proceedings. The Enforcement Division conducts both formal and informal inquiries and may initiate an investigation at any time a violation is suspected. Enforcement Division investigations are enumerated in the SEC Annual Report (beginning on page 103) and are further discussed in our response to Question 12.

In addition to the investigative and prosecutorial activities conducted by the Enforcement Division on a civil basis, the US Department of Justice may initiate criminal actions for violations of the federal securities laws. The Department of Justice enforces Section 906 of the Sarbanes-Oxley Act of 2002, whereby the CEO and the CFO of an issuing entity must now certify that financial statements comply with Sections 13(a) or 15(d) of the Securities Exchange Act of 1934, and that the information "fairly presents" the financial condition and results of business operations under threat of criminal penalties. "Knowing" false certification is punishable by a fine of up to \$1 million and imprisonment of up to 10 years. "Willful" false certification is punishable by a fine of up to \$5 million and imprisonment of up to 20 years.

Question 3 – Delegation

In case other bodies carry out enforcement on behalf of the body with the ultimate responsibility – what are the names of these ‘delegated’ bodies, what part of the enforcement has been delegated to them and how is the delegated body supervised?

The SEC’s responsibilities for enforcement of proper application of US GAAP are not delegated to any other body, although there are other participants and factors in the US capital market that also enforce or promote issuers’ compliance with GAAP and high quality disclosure to investors. As mentioned in our response to Question 2, the US Department of Justice may bring criminal actions against issuers for fraudulent financial statements and other violations of law, thereby providing a further enforcement of proper application of US GAAP. (If a violation of US GAAP is of a nature that criminal penalties would be triggered, the SEC may refer the case to the Department of Justice. The Department of Justice may also develop an independent interest in a matter and commence a criminal prosecution.)

In another example, independent auditors registered and inspected by the Public Company Accounting Oversight Board (PCAOB) are responsible to provide assurance that listed company financial statements are presented in accordance with US GAAP in all material respects. Rigorous auditing and independence standards help ensure that auditors conduct high-quality audits and thereby serve to promote and enforce compliance with US GAAP. The SEC expects auditors to take a firm stance with audited companies regarding proper application of US GAAP and also to develop and to implement quality control processes within their firm networks to promote consistent and correct interpretation of US GAAP across the audit firm network. Auditors are required under both auditing standards and SEC regulations to communicate with management and with those charged with corporate governance regarding selection of accounting policies and accounting issues coming to their attention in an audit.

The SEC’s requirements related to Section 404 of the Sarbanes-Oxley Act also work to promote compliance with GAAP through attention to, and issuer and auditor reporting on and attesting to, an issuer’s internal controls over financial reporting. Other organizations such as the PCAOB play a role in promoting correct application of US GAAP in inspections of public company audits because instances of improper application of US GAAP may come to light in inspections. When such issues arise, the PCAOB staff would bring such matters to the attention to the SEC staff as well as discuss the issues with the auditors and issuer companies involved.

Other US financial regulators, which are concerned primarily with the safety and soundness of financial institutions, also have requirements for financial statements prepared in accordance with US GAAP. These regulatory organizations may initiate questions and request corrective actions with respect to their regulated entities. Such regulators would typically consult with the SEC when

a matter of GAAP application in public company financial statements is challenged but disputed by the reporting company and its auditor.

Question 4 – Interrelationship

In case there is more than one enforcer with regard to compliance with your GAAP, what agreements have been made concerning the interrelationship between the enforcers?

The SEC is the ultimate enforcer of US GAAP for companies whose securities are traded in the US capital market and directly enforces the application of US GAAP by issuers filing documents with the SEC. The SEC would also typically be consulted in actions initiated by other U.S. governmental authorities in which matters relating to application of US GAAP are being challenged and disputed.

Question 5 – Independence

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from the government? Please provide details of any independence arrangements that are in place.

The SEC, an independent governmental agency, exists to protect the public interest through the mandate it was given by the US Congress to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Governing statutes and Congressional oversight provide for many checks and balances to ensure that this public mission is achieved. The SEC is an independent agency that operates under a bipartisan Commission composed of five Commissioners appointed by the President and confirmed by the US Senate. One of the Commissioners is designated as the Chairman by the President.

Protection from political interference that might arise from special interests is assured by the SEC's status as an independent government agency with full authority to regulate and enforce the securities laws, as well as by the public due process of SEC rulemaking, a legal requirement to have no more than three Commissioners drawn from any one political party, and other protections.

The Financial Accounting Standards Board (FASB) is established as an independent, private-sector accounting standards-setting body that operates under SEC oversight and the Public Company Accounting Oversight Board (PCAOB) is also established as an independent oversight body providing private sector regulation of the audit profession under SEC oversight.

Is (are) your enforcement body (bodies) designed in a way that ensures an adequate independence from market participants, issuers, auditors and other stakeholders? Please describe.

Yes. The SEC is an independent agency led by a bipartisan Commission, with a diverse professional staff that is a mix of longtime career government employees, formal academic and professional fellowship positions typically of one to two years, and persons spending relatively short portions of their careers at the SEC (e.g. three to ten years) in SEC work.

SEC employees are subject to stringent ethics requirements that are designed to promote objectivity and independence. These ethics requirements address many matters that might affect independence, or might be perceived as affecting independence, including restrictions on ownership and trading of securities, outside employment, compensation and gifts from outside organizations, personal financial disclosure requirements and other matters.

Much of the SEC staff's work is accomplished in teams and is subject to successive levels of internal review. Rule making is subject to administrative procedures that generally assure both public input and independence from special interests.

Question 6 – Powers

What powers (investigative powers and powers to take action) does your enforcement system have, and which body (bodies) has (have) these powers? Please describe as far as possible, how and when you use each power. If relevant, please also state what powers have been delegated and to whom.

The SEC's Division of Enforcement investigates possible violations of securities laws, recommends Commission action when appropriate, either in a federal court or before an administrative law judge, and negotiates settlements on behalf of the Commission. The SEC has civil enforcement authority, but it works closely with various criminal law enforcement agencies throughout the country to assist with criminal cases when the misconduct warrants more severe action.

In civil suits, the Commission seeks injunctions, which are orders that prohibit future violations; a person who violates an injunction can be subject to fines or imprisonment for contempt. In addition, the Commission often seeks civil money penalties and the disgorgement of illegal profits. The courts may also bar or suspend individuals from acting as corporate officers or directors. The Commission can bring a variety of administrative proceedings, which are heard by administrative law judges and the Commission itself on appeal. One type of proceeding, for a cease and desist

order, may be instituted against any person who violates the federal securities laws. The Commission may order the respondent to disgorge ill-gotten funds in these proceedings. With respect to regulated entities (e.g., brokers, dealers and investment advisers) and their employees, the Commission may institute administrative proceedings to revoke or suspend registration, or to impose bars or suspensions from employment. In proceedings against regulated persons, the Commission is authorized to order the payment of civil penalties as well as disgorgement. Releases related to recently-instituted or settled administrative proceedings are posted on the SEC website. In addition, the website contains initial decisions issued by administrative law judges in contested cases. For details, refer to <http://www.sec.gov/divisions/enforce/enforceactions.shtml>.

The SEC Enforcement Division obtains evidence of possible violations of the securities laws from many sources, including its own surveillance activities, other Divisions of the SEC, and other securities industry sources, press reports, and tips and investor complaints. Issuers discovering instances of misstatement and non-compliance with US GAAP also self-report to the SEC. The Enforcement Division section on the SEC website describes these activities and has a public link for "Tips and Complaints" (see <http://www.sec.gov/divisions/enforce.shtml>.)

SEC investigations are generally conducted privately. Facts are often first developed through informal inquiry, interviewing witnesses, reviewing audit work papers, and other methods. Once the Commission issues a formal order of investigation, the Enforcement Division's staff may compel witnesses by subpoena to testify and produce books, records, and other relevant documents. Following an investigation, SEC staff members present their findings to the Commission for its review. The Commission can authorize the staff to file a case in federal court or bring an administrative action. Individuals and companies charged often choose to settle the case, while others contest the charges.

Under the securities laws the Commission can bring enforcement actions either in the federal courts or internally before an administrative law judge. The factors considered by the Commission in deciding how to proceed include: the seriousness of the wrongdoing, the technical nature of the matter, tactical considerations, and the type of sanction or relief to obtain. Often, when the misconduct warrants it, the Commission will bring both proceedings.

1. **Civil action:** The Commission files a complaint with a U.S. District Court that describes the misconduct, identifies the laws and rules violated, and identifies the sanction or remedial action that is sought. Typically, the Commission asks the court to issue an order, called an injunction, that prohibits the acts or practices that violate the law or Commission rules. A court's order can also require various actions, such as audits, accounting for frauds, or special supervisory arrangements. In addition, the SEC often seeks civil monetary penalties and the return of illegal profits, known as disgorgement. The courts may also bar or suspend an individual from serving as a corporate officer or director. A person who

violates the court's order may be found in contempt and be subject to additional fines or imprisonment.

- 2. Administrative action:** The Commission can seek a variety of sanctions through the administrative proceeding process. Administrative proceedings differ from civil court actions in that they are heard by an administrative law judge (ALJ). The administrative law judge presides over a hearing and considers the evidence presented by the Division staff, as well as any evidence submitted by the subject of the proceeding. Following the hearing the ALJ issues an initial decision in which he makes findings of fact and reaches legal conclusions. The initial decision also contains a recommended sanction. Both the Division staff and the defendant may appeal all or any portion of the initial decision to the Commission. The Commission may affirm the decision of the ALJ, reverse the decision, or remand it for additional hearings. Administrative sanctions include cease and desist orders, suspension or revocation of broker-dealer and investment adviser registrations, censures, bars from association with the securities industry, and payment of civil monetary penalties, and return of illegal profits.

Question 7 – Organization

What are the number of issuers and number of staff working with enforcement in your country and how do you ensure that sufficient resources are granted to your enforcement bodies?

The SEC has approximately 4100 employees located in 4 Divisions and 20 Offices and deployed at 11 regional and district office locations throughout the United States. The majority are employed at the SEC's main offices in Washington, D.C. These employees provide oversight and enforcement on all aspects of capital market functioning addressed in the 1933 Securities and 1934 Exchange Acts and 1940 Investment Companies Act and other laws noted in the response to Question 2 in this survey. The 2005 budget for the agency was \$913 million dollars, a 30% increase over the 2004 budget of \$700 million, and the proposed budget for 2006 is \$888 million. At the \$888 million level, the level of funding is more than double the level of funding in 2002 (\$438 million).

It is not possible to give an exact number of persons who would be involved specifically with enforcement of accounting standards as this takes place within the overall context of numerous activities devoted to review and enforcement of full disclosure to investors, both at the SEC's main offices in Washington and in the regions. A general measure may be taken from the approximate number of people devoted to review of issuer filings in the SEC's Division of Corporation Finance (500), the number of Investment Management Division employees involved in reviewing accounting and financial reporting matters (60) and staff that advise on financial reporting matters

in the SEC's Office of the Chief Accountant (60). In addition, the SEC Enforcement Division numbers approximately 935 employees and it may be estimated that some portion of these are specialists devoted to the approximately 28% of 2004 enforcement cases that were related to accounting and financial reporting matters.

Each year the SEC budget is prepared according to program needs and submitted by the President to the US Congress for approval. SEC personnel testify as to the necessity for and use of funds, and such testimony appears on the SEC website. In response to accounting and corporate scandals as well as security and information needs arising after the September 11, 2001 terrorist attacks, the resources made available to the SEC have increased dramatically in recent years. As discussed on page 27 of the SEC Strategic Plan, the President's 2005 request to Congress represented a 116% increase in dollars and a 29% increase in full-time equivalent employees over 2001 levels.

Question 8 – The scope of enforcement (documents and issues)

What kind of financial information is subject to enforcement in your country? (annual and interim financial statements, individual and consolidated accounts, prospectuses¹, other)

The SEC staff reviews and enforces the application of US GAAP in prospectuses, listing documents, registration statements, periodic reports and ongoing reports filed with the SEC. Periodic and ongoing reports include annual and quarterly reports and reports of material developments. SEC regulations prescribe what information is to be provided for all forms. All information supplied to the SEC and to the public is subject to the relevant provisions of the securities laws listed in the response to Question 2 and is subject to SEC enforcement, including investigations and enforcement proceedings.

For domestic companies, this would include, for example, prospectuses and registration statements filed on Forms S-1, S-2 and S-3 and others such as S-4, S-8 etc., to sell securities; Form 10 to list securities under 1934 Act registration, annual and interim financial statements filed on Forms 10-K and 10-Q annual reports to shareholders; proxy solicitations, including solicitations for approvals of mergers and acquisitions, significant events and material developments reporting under SEC Form 8-K. The Division of Investment Management has a comparable complement of forms for reporting by mutual funds and other pooled investment entities and public utility holding companies.

For foreign private issuers, examples would primarily include prospectuses, registration statements and annual reports filed on Forms F-1, F-2, F-3 and F-4 to offer securities, and Forms 20-F /40-F

¹ Prospectus approval concerning financial information and not ongoing information.

to list securities under 1934 Act registration; annual report Forms 20-F and 40-F, and any foreign private issuer filings using the aforementioned U.S. domestic forms.

For many issuers, SEC staff reviews include all forms and data required when shareholders must vote on proposed acquisitions, disposals, and other material corporate events.

In addition to the Divisions of Corporation Finance and Investment Management review of information in SEC filings, the SEC Enforcement Division enforces compliance with SEC Regulation FD, which addresses disclosure made by corporate officials in analyst meetings, conference calls and other non-public settings.

Under US GAAP and SEC requirements, information is provided on a consolidated financial statement basis for listed companies, along with GAAP disclosures required for segment reporting and also separate data for significant subsidiaries and equity investments as specified. Beyond the specific requirements of US GAAP, SEC regulations also prescribe the reporting of additional data needed for full disclosure and an understanding of the business of a listed entity. Also, in defined circumstances, financial statements of entities other than the listed entity may be required – for example, in the case of significant acquired businesses and equity investees, guarantors of debt, etc.

The SEC staff's review of documents filed with the SEC focuses on what is disclosed in the document, required to be disclosed in the document, and incorporated by reference into it. SEC staff may also review news reports about an issuer, as well as check information on an issuer's web site, when appropriate, although the SEC staff does not conduct an audit or on-site inspection of an issuer as part of its review.

What kind of issuers are subject to enforcement in your country? (e.g. listed issuers, issuers applying for admission to trading of their securities on a regulated market, other)

First, US domestic and foreign private issuers that are registered with the SEC come under the SEC staff's regular review and enforcement processes. These would include all issuers offering securities under the 1933 Act or listing on U.S. exchanges (many registered offers occur without a listing) and all entities that issue publicly traded debt.

Second, in addition to issuers that are required to file reports with the SEC, the SEC can also pursue antifraud actions in connection with any purchases and sales of securities that occurred through use of the US mails or any instrumentality of interstate commerce, even when such transactions occur without a registration statement. All issuers are subject to enforcement actions that might be initiated by the Commission's Enforcement Division as authorized by the Commission.

Question 9 – Methods of enforcement: Ex-ante or ex-post approach

Is the normal procedure of enforcement of compliance with relevant GAAP ex-ante (before statement is published) or ex-post (after statement has been published) or both? Please state if you use different approaches for different types of financial information (e.g. annual statements vs. prospectuses).

Four principal approaches are used:

1. All registration statements for initial public offerings are reviewed ex ante before the securities to be offered may be sold to the public; however, in these cases the financial statements involved have been filed with the SEC and are already publicly available through the EDGAR system, and are therefore available to any investor or prospective investor while the review is going on. Changes may occur in these documents as a result of the review effort. Exchange Act registration statements for a first-time filer are also reviewed. Subsequent registration statements and prospectuses are reviewed if they meet certain internal criteria that are set by the SEC staff. A few registration statements, such as Form 8-A (registration of certain classes of securities under the Exchange Act by a reporting issuer) and Form S-8 (registration statement for securities to be offered under any employee benefit plan by a reporting issuer), and similar forms for investment companies, become effective immediately without staff review. However, these registration statements are still subject to ex-post review and enforcement action.
2. All quarterly and annual reports are subject to ex-post review and enforcement action. Periodic reports are selected for review if they meet certain internal staff criteria. Under the Sarbanes-Oxley Act, all reporting companies must be reviewed by the SEC staff at least once every 3 years.
3. In addition, a company may be selected at any time by the SEC staff for a special review when the SEC is reviewing a targeted topic area, an industry, or a specific type of disclosure -- for example, restructuring charges, environmental liabilities. Such special reviews are sometimes initiated if the SEC staff is concerned about a certain type of problem in one or more issuer companies in the same industry. Also, SEC Enforcement Division investigations may be triggered by employee whistleblower complaints or anonymous tips to an SEC hotline as listed on the SEC website.
4. In addition to the reviews of issuer filings described above, the SEC Enforcement Division may commence an investigation at any time that a violation of the securities laws is reported or suspected.

Please also, state if your enforcement body offer issuers a possibility to obtain a pre-clearance, as to whether a certain treatment complies with your GAAP or not. To what extent is this facility used by issuers?

Issuers and their auditors are encouraged to and do bring inquiries regarding unusual transactions and proposed treatments to the SEC staff in the Office of the Chief Accountant and do so frequently. The processes to be followed doing so are described on the SEC website www.sec.gov in the section on "Information for Accountants". The SEC Divisions of Corporation Finance and Investment Management also respond to questions in advance of securities filings.

Question 10 – Selection

How does your enforcement body select the issuers, whose documents containing financial information, are to be examined (risk based, random, rotation basis or other)? In case you make use of a risk based approach, please give a short description of the types of risks you include in your assessment and the inputs/criteria that you take into consideration.

The SEC staff uses a variety of approaches that include risk-based assessments, regular rotating review of all issuers at various intervals using size and frequency criteria, special topical review of selected subject areas, and both full review and partial review approaches. The details of these approaches are not made available publicly, but a general description of risk factors considered includes whether the issuer has issued material restatements of financial results, whether the issuer has experienced significant volatility in its stock price compared to other issuers, the size of the issuer's market capitalization, whether the issuer is an emerging company and has disparities in its price-earnings ratio, and whether the issuer's operations affect any material sector of the economy, among other factors. As a result of the Sarbanes-Oxley Act, every reporting issuer will be subject to a review at least once every 3 years.

Question 11 – Spectrum of checking procedures

How does your review process work? What kind of checking procedures does your enforcement body use (formal checks, in-depth substantive in-nature checking, etc.) and in which situations do you use which procedures?

Once a filing is selected for a full review, attorneys and accountants from the SEC's Divisions of Corporation Finance and Investment Management review the documents for compliance with the applicable legal and accounting requirements. The staff reviews all registration statements (which

include prospectuses) for initial public offerings and all Exchange Act registration statements that are filed by first time filers to register a class of securities for listing. These registration statements are given a full review by the staff, although such reviews do not include an inspection of the issuer itself. The staff may select subsequent filings for review if it has a specific concern about the issuer's industry group or about a specific financial statement disclosure that it has observed, among other things. A filing that is selected for review in that case may be subject to a more limited review that focuses on the issue of concern to the SEC staff. In any case, every reporting issuer is subject to a review at least once every 3 years. The general process for the Divisions of Corporation Finance and Investment Management review of disclosure and application of US GAAP involves reading the documents that have been filed and issuing comment letters to issuers, including requesting explanations and justifications of accounting treatments therein that appear questionable or incomplete.

When issues arise regarding the application of GAAP, the SEC Office of the Chief Accountant may also review filing documents, along with any explanations and justifications of accounting treatments and disclosures therein. The Office of the Chief Accountant and the Divisions of Corporation Finance and Investment Management may also engage in conference calls and meetings with issuers and auditors on such matters.

The Office of the Chief Accountant and the Divisions of Corporation Finance and Investment Management do not routinely review source documents or work papers, although reviews of such documents may take place if the SEC Enforcement Division commences an investigation. The Enforcement Division may also take testimony from issuers and auditors and others. The Commission, through its Enforcement Division, can subpoena documents and testimony from issuers, auditors, third parties, and generally undertakes a comprehensive and thorough investigation into allegations of financial fraud when this is warranted.

Please see our answer to question 10 for further details regarding review processes.

Question 12 – Actions

What action can your enforcement body take, in order to make sure that the market gets timely relevant and reliable information, when misstatements have been discovered (e.g. require supplementary information, public correction, reconciliation or corrective note, restatement, suspension from trading, delisting)? Please also state if the actions available differ depending on materiality of the misstatement, the frequency at which a certain issuer publishes misstatements or on other elements.

All of the measures noted may be applicable as the circumstances warrant. Consideration would be given to all the facts and circumstances of each case in determining the appropriate action. The SEC Division of Corporation Finance requests issuers to restate results or make corrective disclosures when needed. Cases may also be referred to the SEC Enforcement Division for further investigation. The SEC has legal authority to suspend trading and deregister a security. In the case of delisting, the action would be carried out by the relevant exchange.

Materiality, frequency of misstatements or other elements would be part of the overall consideration of facts and circumstances rather than used as governing factors in some predetermined way.

If certain actions can be taken only in case of material misstatements, please state your definition of materiality with regard to the financial information examined.

The basic definition of materiality used in staff reviews is whether the misstatement or omission is one that would affect a reasonable investor's decisions regarding the purchase or sale of securities. On August 12, 1999, SEC staff issued Staff Accounting Bulletin No. 99, which provides some guidance on the issue of materiality in the context of the preparation of financial statements. The Investment Companies Act of 1940 also contains guidance for materiality in the context of mutual funds and other pooled investment entities.

SAB No. 99 reminds registrants and their accountants that exclusive reliance on quantitative benchmarks in assessing the materiality of financial statement items "has no basis in the accounting literature or the law." The thrust of SAB No. 99 is that management and auditors must consider both quantitative and qualitative factors in assessing the materiality of a financial statement item, and that qualitative factors may render quantitatively small misstatements material. In particular, SAB No. 99 notes the following non-exhaustive list of qualitative considerations:

1. whether a misstatement involves an estimate or an item capable of precise measurement;
2. whether the misstatement masks a change in earnings or other trends;
3. whether the misstatement hides a failure to meet analyst expectations;
4. whether the misstatement converts a loss into income or vice versa;
5. whether the misstatement concerns a segment significant to the registrant's operations or profitability;
6. whether the misstatement affects the registrant's compliance with regulatory requirements, loan covenants or other contractual commitments;

7. whether the misstatement increases management compensation (e.g., bonus or other incentive compensation); and
8. whether the misstatement conceals an unlawful transaction.

SAB No. 99 notes that the intent of management may provide evidence of materiality regardless of the magnitude of the misstatement, particularly where items are intentionally misstated in an effort to manage earnings. Management and auditors should consider the materiality of the misstatement of individual items and not just the aggregate effect of all misstatements. For example, offsetting misstatements may each be material individually. SAB No. 99 also urges registrants and auditors to consider the effect of misstatements from prior periods.

Please also state how many cases of enforcement you have conducted in the last two years and which actions have been used in these cases.

The SEC Annual Report on the SEC website at www.sec.gov lists enforcement cases handled by the Enforcement Division each year by number and type. It also lists the totals of reviews done by the Division of Corporation Finance and Division of Investment Management.

For Enforcement Division Actions, in the 2003 Annual Report on the SEC website, the total number of enforcement cases of all types was 679, of which 199 were financial statement and reporting cases. In 2004, the number of financial statement and reporting cases was 179. Details on dispositions of individual cases are also available in the Annual Report.

For totals of Division of Corporation Finance and Division of Investment Management reviews, please refer to the relevant sections of the 2003 SEC Annual Report.

The 2004 Annual Report will be published on the website soon.

Question 13 – Consistent decisions and actions

How do you ensure a consistent application of the standards (are decisions submitted to a (central) database)? What is the extent of any relationship between the enforcement body and the standard setter? Does the enforcement body issue interpretation guidance – what is its status?

Within the SEC staff, reviews and consultations take place in a supervisory hierarchy within the Divisions of Corporation Finance and Investment Management. Consultations also occur with accounting specialists in the Office of the Chief Accountant and with the Deputy and Chief

Accountant as needed. SEC staff letters to and from registrants with respect to particular filings are maintained in files. The SEC Enforcement Division also has an internal review process and supervisory hierarchy for enforcement actions.

The Office of the Chief Accountant and the Divisions of Corporation Finance and Investment Management also issue informal interpretive guidance and other information such as Staff Accounting Bulletins, interpretive releases, frequently asked questions and answers, no action letters, and other guidance that is posted on the SEC website in the Information for Accountants and Divisions of Corporation Finance and Investment Management sections.

The SEC staff also participates in informal discussions with other financial regulators in the US and in other countries on accounting matters arising from their reviews of listed companies and supervised entities, as part of a number of efforts to promote consistency of interpretations among regulators.

In addition to these measures, as noted earlier, the SEC Enforcement Division posts a significant amount of information on the SEC website regarding the disposition of enforcement actions.

If you have different enforcement bodies please also describe how you ensure coordination between them.

The SEC has ultimate responsibility for the enforcement of US GAAP. In executing this responsibility, we engage in consultations among the various SEC staff divisions and offices and also with other regulators who are users of financial statements, as described later in this question.

What does your enforcement body do to secure consistency with regard to the actions taken? (similar actions to similar infringements even if different enforcement bodies are involved?)

The SEC's internal processes involve teams of individuals working on reviews and inquiries relating to issuer application of US GAAP. Reviews in which US GAAP application questions arise include reference to records of previous questions and staff rulings and also include consultations among the Divisions of Corporation Finance and Investment Management, the Enforcement Division, and the Office of the Chief Accountant. Part of the process for handling a new inquiry involves determining if there have been past SEC staff discussions on the topic, as well as asking the issuer to explain their chosen application of US GAAP and why it is appropriate in this circumstance. The staff has a hierarchy of reviewers and supervisors involved in each inquiry about the application of US GAAP.

Insofar as other U.S. regulators who are users of financial statements are concerned, each regulator may specify additional disclosure and special accounting treatments for regulatory reporting

purposes, in addition to general purpose US GAAP financial statements. For listed companies, however, the SEC, in consultation with the Financial Accounting Standards Board (FASB), is the final arbiter of US GAAP compliance.

The SEC staff at times consults with securities regulators in other countries when questions arise regarding an IFRS or local GAAP application by an SEC foreign registrant. Plans are underway to facilitate and enhance information exchanges among securities regulators and others who enforce the application of accounting standards through projects being considered by IOSCO and CESR.

The Commission publishes Accounting and Auditing Enforcement Releases describing enforcement actions taken; these are available on the SEC website.

Question 14 – Public reporting

Does (do) your enforcement body (bodies) report to the public on its (their) activities? In this case please state what kind of information is reported to the public, how often and whether the information published is in anonymous form with regard to the issuers examined.

The SEC issues an Annual Report each year that describes activities of all its Divisions and Offices. Information is included on the number and type of issuer reviews and enforcement cases, as well as on other activities associated with financial reporting. The SEC also publishes its Strategic Plan, prepared in accordance with the Government Performance and Results Act of 1993 (GPRA). These reports are available on the SEC website. In addition, the SEC provides comprehensive information on its activities, including all press releases, speeches and public statements of Commissioners and staff, testimony given before Congress, individual Enforcement Case Releases, accounting and reporting interpretive guidance, and no action letters and other documents issued, and numerous other types of information on the SEC website.

In regard to the routine ongoing reviews and inquiries made of issuers to promote and improve disclosure to investors, and investigations of possible violations, the SEC does not normally make any report on an "issuer-identified" basis while such work is in progress. If a company judges that information regarding SEC inquiries in progress would be material to investors, the company is obligated to disclose this information to the public.

In addition to formal reports issued by the Commission, SEC staff members and Commissioners may speak publicly as individuals giving their personal views and observations about SEC activities, financial reporting issues, problems being found in staff reviews, and cases of fraud or abusive accounting. These individual speech communications or other public statements are mostly on a topical, non-identified issuer basis. In some cases, a company name and/or auditor

name may be cited in an example, if a case has been resolved or if other public statements have already identified the entity involved.

Comment letters written by the Division of Corporation Finance in connection with filing reviews are subject to the Freedom of Information Act and are therefore usually accessible to the public upon specific request. The Commission has announced that filing review correspondence from the Division of Corporation Finance for filings made after August 1, 2004, and for which the review has been completed will be posted on the SEC's website.

Questions regarding the responses to this questionnaire may be directed to Julie Erhardt or Susan Koski-Grafer in the SEC Office of the Chief Accountant, 202-942-4400.