Speech by SEC Staff:
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by

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Thank you, Ed. I am very pleased to be here today. This is my first trip to Europe in my new role and I feel it is very fitting that it is before this Institute. The increasing success (and size) of this annual institute with its global focus confirms something that we all already know to be true: our capital markets are increasingly crossing borders, and oceans, and increasingly demanding that securities regulations and regulators in all jurisdictions have the bigger picture in mind. For my part, I believe in listening to the markets, safeguarding their integrity and helping them operate as efficiently as possible. And in order to succeed at this, it's critical that market participants, and regulators, across the spectrum, have the whole picture in focus. And I think we do that better when we do it together.

Tomorrow morning, you will have the good fortune of hearing from Fabrice Demarigny, the Secretary General of the Committee of European Securities Regulators about "The Transatlantic Financial Services Regulatory Dialogue — the View from CESR". Those will be very important remarks from a key perspective. For my part, I would like to talk with you from the U.S. perspective about a few recent regulatory developments and their importance to the global capital markets. And from that, I hope you will be able to see that the SEC is proving both its desire and its ability to be an active and worthy partner with its international counterparts, including CESR, in advancing the needs of our global capital markets and the investors that depend on them.

Before I speak any further, however, I need to provide the so-called "standard disclaimer" and remind you that as a matter of policy, the U.S. Securities and Exchange Commission disclaims responsibility for any private statements of any SEC employee. The views I'm going to express today are solely my own and do not necessarily reflect the views of the SEC or of any members of its staff other than myself.

There is a host of things that we could take up this morning to examine the SEC's commitment to enhancing our global markets and being a key partner in ongoing cross-border regulatory dialogues. And we could talk about many of them for hours. But I would like to choose three discrete topics to examine through this lens: (1) the Commission's proposed rulemaking concerning deregistration by foreign private issuers; (2) the

Commission's efforts this past year to improve the implementation of Section 404 of the Sarbanes-Oxley Act of 2002 and its requirements concerning internal control over financial reporting, including for foreign private issuers; and (3) the Commission's role in the ongoing efforts to improve financial reporting through International Financial Reporting Standards (or IFRS) and the promotion of accounting convergence.

The first two topics are covered in considerable detail by recent Commission releases, staff statements, etc. so I will just touch lightly on them as they relate to my theme today and then devote more significant time and attention to the details of my last topic.

Foreign Deregistration

As I assume many if not all of you know, on December 13 the SEC voted to issue a revised proposal concerning amendments to its rules regarding how foreign private issuers may terminate their registration with the Commission. This proposal remains open for public comment until February 12, and I would urge any of you with thoughts on this matter to provide the SEC with your comments. As the very existence of this re-proposal itself shows, we are keenly interested in hearing from the international community and all parties who might be affected by this rulemaking. We take the comments we receive very seriously, and they have a very real effect on the Commission's rulemakings.

Under the current rules, a foreign private issuer may terminate its registration under the U.S. Securities Exchange Act and exit the SEC's reporting regime if the class of the issuer's securities has less than 300 record holders who are U.S. residents. In December 2005, the Commission issued its first proposal to amend those rules; that proposal would have used a threshold test for deregistration that focused primarily on the percentage of U.S. ownership (rather than a specific number of holders) as well as trading volume. It also proposed differential treatment of issuers based on their size.

Our re-proposed rule (Exchange Act Rule 12h-6) would permit the termination by a foreign private issuer of Exchange Act reporting regarding a class of equity securities based solely on the issuer's U.S. trading volume compared to the trading volume in its primary trading market. Specifically, the Commission proposed that an issuer, regardless of size, be allowed to terminate its Exchange Act registration and reporting obligations regarding a class of equity securities if the U.S. average daily trading volume of the subject class of securities has been no greater than 5 percent of the average daily trading volume of that class of securities in the issuer's primary trading market during a recent 12 month period.

In proposing this new standard, the SEC remains deeply committed to its complementary missions of investor protection and promoting quality capital formation (which of course benefits the investing public as well as public companies). I believe the approach to deregistration proposed last month will better serve the needs of both U.S. investors and non-U.S. issuers by providing a clear, consistent, easy-to-apply, and fair standard by which foreign registrants may completely withdraw from our capital markets and end their obligations to comply with our reporting rules. Let me be clear, however, as several commissioners and I discussed at the SEC's open meeting last month, our goal is not to encourage foreign private

issuers to withdraw from the U.S. I genuinely believe, and would hope, that a more rational and reasonable approach to deregistration — as well as to an improved implementation of Sarbanes-Oxley Section 404, to which I will turn in a moment — could improve the total picture as foreign companies contemplate entering the United States in the future. The comment process should help us understand if this re-proposal is indeed a more rational and reasonable approach to deregistration.

Shifting to a test based solely on U.S. trading volume was such a significant change that the Commission decided to put it out as a proposal again. I should also note that it was a change that came directly from the comment process. The Commission's and the staff's thinking on these issues, and understanding of the "bigger picture", were significantly aided by input from a variety of sources, including numerous foreign companies, law firms and other types of advisors, as well as the EU itself. As the public comment file that the SEC maintains on its website makes clear, our European partners played an active role in our consideration of the first proposal. The European Commission submitted a comment letter which was then followed by several meetings between the senior staff of the SEC (myself included) and the EC. I can tell you personally that those meetings had a high value for the SEC, and the insights we gained from our European counterparts played a significant role in our coming to recommend the recent re-proposal. The SEC is very sincere when it says its doors, as well as its mind, are open during the rulemaking process. I hope we will all benefit from a similarly robust dialogue during this next phase leading up to the Commission's anticipated adoption of a final rule early this year. I encourage all of you to be involved in that.

Section 404 and Internal Control Over Financial Reporting

I believe you can also see the Commission's sensitivity to the needs of our global markets if you consider a couple of other actions taken last month concerning implementation of Section 404 of the Sarbanes-Oxley Act. As you know, Section 404 requires that companies provide two reports on their internal control over financial reporting: one based on their management's assessment of those controls, and another from their independent auditors, attesting to management's assessment. The devil, of course, is always in the details, and the implementation, and particularly the associated costs, of Section 404 have received almost unbounded time and attention from a wide variety of interested parties, including the SEC and other regulators and government actors.

On December 13, at the same open meeting where it issued the revised deregistration proposal, the Commission voted to propose guidance, for the first time, for corporate management as they perform their required assessments of their companies' internal control over financial reporting. We hope that our provision of management guidance will reduce the costs and improve the effectiveness and efficiency of Section 404 compliance for public companies. As with deregistration, that proposal is currently open for comment, and I would urge any of you with reactions or thoughts on the proposal to send those into the Commission.

Two days after its December 13 meeting, the Commission approved yet another extension of the initial Section 404 reporting compliance deadlines for non-accelerated filers (generally smaller companies, including smaller foreign private issuers) which includes a provision that in their first year of

Section 404 reporting, non-accelerated filers will need to provide only a management assessment report, and not the auditor attestation report. That first management assessment report will be treated as "furnished" with the SEC rather than filed. It is our hope that the timing of those revised compliance deadlines will now align with the availability in final form of our forthcoming management guidance. In fact, in its release, the Commission specifically stated that it will consider another extension, if that management guidance is not yet available as these compliance deadlines fall into place. Last summer, the Commission had already provided an extension of the auditor attestation report requirement for foreign private issuers that are accelerated filers, but not large accelerated filers. The December 15 release made it clear that those first management assessment reports that are submitted by non-U.S. accelerated filers, without an accompanying auditor attestation, will be deemed furnished rather than filed as well.

As part of the rulemaking released on December 15, the Commission also approved "transition relief" for newly public companies — including foreign private issuers listing in the U.S. for the first time, or otherwise becoming subject to our reporting obligations for the first time. Under these provisions (which have been adopted in final form), a newly public company is not required to comply with the internal control reporting requirements of Section 404 until the second annual report filed with the Commission. It is our expectation that this accommodation will alleviate considerable costs and burdens for companies as they contemplate entering the U.S. capital markets without reducing investor protections. Under this new model, companies will not have to expend resources and time gearing up for Section 404 compliance until after they have registered with the Commission and entered the U.S. capital markets, if that is something they choose to do. This should also remove the risk that Section 404 may affect companies' timing decisions as they prepare to enter the U.S. markets. Section 404 was intended to enhance the reliability of financial reporting, not to be a deterrent to quality capital formation, and I believe the SEC's recent accommodation better aligns Section 404 with its purpose. At the same time, I personally feel that the rigor and scrutiny that various external parties (including underwriters, accountants and lawyers on all sides of the transaction) typically pay to newly public companies and their financial statements during that first year and initial listing period, even without Section 404 reporting, provide a meaningful and similar benefit to the investing public.

I will not further review or summarize any of those Commission actions here, but I believe they speak on their own about the Commission's continuing attentiveness and sensitivity to the needs of investors and our capital markets alike. Aside from the one extension specifically for foreign private issuers, the Section 404 matters I have mentioned do not speak *only* to the international markets. But I think you can agree that they do speak *directly* to the international markets nonetheless and offer tremendous potential to improve the implementation of Section 404 for non-U.S. registrants, as well as domestic U.S. companies.

And as with the foreign deregistration re-proposal, the SEC's consideration and refinement of its rulemakings under Section 404 have benefited significantly from extensive public input and from dialogue with a wide variety of parties, including many in the international community. I hope that active and productive dialogue will continue. The comment period on

the SEC's management guidance proposal remains open until February 26. I would also urge you to look at the Public Company Accounting Oversight Board's (the PCAOB's) recent proposal to replace Auditing Standard No. 2 with a significantly revised standard for the auditor's attestation report. This new standard is intended to further improve the efficiency and effectiveness of Section 404 implementation. The PCAOB is also taking public comments until February 26.

Financial Reporting In An Increasingly Global Market

The Commission's implementation of Section 404 also provides one other visible example of our efforts to be attuned to the special needs and circumstances of the international community, which will take me to my third and principal topic this morning — IFRS and financial reporting.

In order to support the very important 2005 adoption of IFRS as mandated by the EU for European listed companies, the SEC previously had granted foreign private issuers a one-year extension of the compliance deadlines for internal control assessments and attestation reports under Section 404. The EU's decision to mandate IFRS for European listed companies has resounded in our global markets in numerous ways of course. In addition to offering the Section 404 extension, the SEC also provided an accommodation in our reporting requirements which eliminated the need for first-time adopters of IFRS to provide a third year of historical IFRS financial statements that was not called for by the IASB first-time adoption standard.

As you know, under our rules, foreign private issuers must file their annual financial statements with the SEC six months after their year end. And so last summer we saw the first wave of filings by non-U.S. companies, with calendar year-ends, that had just adopted IFRS (or jurisdictional adaptations of IFRS) in connection with the 2005 deadline. If I could, I'd like to take the remainder of my time today to talk with you about this first wave of IFRS filings and the work of various regulators on that and related topics.

The Role of Corporation Finance in the Review of IFRS Filings

As Ed indicated, I am currently serving as the director of the SEC's Division of Corporation Finance. The SEC as an agency, of course, is much more than Corporation Finance, but I believe the Division should have a special place in all your hearts. In addition to putting forward the foreign deregistration proposal for the Commission and playing a key role along with the Commission's Office of the Chief Accountant on the Sarbanes-Oxley Section 404 initiatives I just described, Corporation Finance is the part of the SEC that reviews the Form 20-F's and other filings that foreign private issuers submit to the SEC. In connection with that, it is the staff of Corporation Finance that is responsible for reviewing financial statements that are submitted using IFRS.

I know there are a lot of questions (and some concern) among the international community about our review process for IFRS, and I would like to talk about that and how it fits with the global evolution of financial reporting. It is also important to our "roadmap" that the SEC's former chief accountant Don Nicolaisen laid out in April 2005 for how issuers that file their financial statements using IFRS, as promulgated by the IASB, might

not need to provide reconciliations to U.S. GAAP in the future.[1] I personally support the roadmap and am hopeful that its goals will be met within its projected timetable.

It may be useful to take a few moments first, however, and make sure we all have the same understanding of how Corporation Finance operates in more general terms. I discussed this topic at length in a speech I gave on September 25th at PLI's 4th Annual Directors Institute in New York.[2] That speech is available on the SEC website, and I will not repeat those remarks here today. But if your company, or your client, is registered with the SEC then you should understand how the filings your company makes are handled once they arrive at the Commission's door, or internet portal in today's world.

A large part of the staff and resources of Corporation Finance is devoted to what we call "disclosure operations" — these are the people who review your periodic filings and send you comment letters on them. This is also the group that reviews individual registration statements for the sale of securities and declares them effective, where our rules provide for that. Disclosure operations has 11 different review offices that are organized primarily according to trade or industry type — for example, Telecommunications, Financial Services, Healthcare and Insurance, Natural Resources and Food, and so on. There are teams of 30 to 35 accountants and lawyers in each review office, and each public company is assigned to a particular office. After passage of the Sarbanes-Oxley Act in 2002, this process of reviewing the periodic filings of established public companies took on an added importance. Sarbanes-Oxley requires that the SEC review the filings, including the annual reports, of every listed company "on a regular and systematic basis for the protection of investors," and that, for all reporting companies, these reviews take place no less often that once every three years. By virtue of their sheer numbers, U.S. companies consume the majority of the staff's time and attention in meeting this charge under Sarbanes-Oxley, but foreign private issuers are not excluded from the requirement, nor is our review of their filings any less important to the staff of Corporation Finance than is our review of the filings of U.S. domestic companies. As a floor, Sarbanes-Oxley requires review at least every three years. Everyone should understand, though, that we have adopted a risk-based approach to selecting filings for review in Corporation Finance, and many companies will find themselves being reviewed more often, particularly larger companies.

With regard to the filings of foreign private issuers, there is another all-important resource available within Corporation Finance — the Division's Office of International Corporate Finance, which is headed up by Paul Dudek. While reviews of filings by foreign private issuers are handled, in the first instance, by the industry groups I just described, Paul's Office is available to assist our disclosure operations staff should any issues or questions arise. The Office is also available to registrants and others in the international community should issues or questions come up, in connection with a filing or otherwise.

Financial Reporting with IFRS

Against that backdrop of regular reviews of corporate filings, the staff of Corporation Finance has been looking at the financial statements filed this year by companies that have adopted IFRS, whether as promulgated by the

IASB or with the adaptations made by various jurisdictions that have moved to IFRS. (The roadmap of course contemplates ending the reconciliation requirement only for those filers that are using IFRS as promulgated by the IASB.) First, I should make clear that our review of filings by companies that use IFRS is premised on the same review process that we use for all other filers. Our review of financial statements is based on a company's specific filing, and our initial comments typically are most appropriately described as information seeking, not conclusory. We ask questions about things that are not clear to us (or appear to be omitted) from either the face of the financial statements or in the notes, and we seek clarifying information that is specific to the company being reviewed. We may also seek to have the disclosures required by IFRS presented in a manner that we believe is clearer for the benefit of the investors who rely on issuers' financial reporting. But our initial comments do not seek to change anyone's accounting. And, I think it's very important that we all understand that, with regard to IFRS filers, my staff is not seeking to dictate interpretations of IFRS. We are only interested in issuers' complete and faithful application of the relevant accounting standards. To the extent our correspondence with the company cannot resolve our questions about the issuer's accounting, it may be appropriate to take those questions up with the appropriate home country regulator. We are not aiming to be the last word on IFRS in the international arena. Because there seems to be considerable unease on this point in some quarters, I want to be very clear that in commenting on IFRS financial statements, the SEC staff is not trying to commandeer IFRS.

To date, we have reviewed and commented on the filings of approximately 85 foreign private issuers that adopted IFRS in 2005 and filed with us in 2006. That includes both IFRS as promulgated by the IASB and adaptations of IFRS in particular jurisdictions. As you may know, if my staff has issued comments (which we do not do for every filing we review), then the SEC staff's comments (and the companies' responses) are later posted on the Commission's website and freely available to the public. As of last Friday, January 12, we had posted to our EDGAR system comments and responses from our completed reviews of filings by 8 issuers that adopted IFRS for the first time in 2005. More will be posted soon.

Those postings, whether for domestic issuers or foreign private issuers, do not go on our website until at least 45 days have passed since the review was complete. The staff in Corporation Finance has also developed a practice of advising issuers, in writing, when our review of a company's filing is complete, so the expiration of the 45 days will not be a surprise to the issuer itself. This policy of posting comments and responses to the website is relatively new for the SEC, and we had a significant backlog of files when the policy was first implemented. But we are now "caught up" — with over 7,000 sets of correspondence posted. So you should generally expect to see comments and company responses go up on the web pretty quickly after the 45-day waiting period has passed.

So what are we seeing in our review of IFRS filings? And what are we saying about them?

In a speech she gave last month to the AICPA National Conference, the SEC's deputy chief accountant, Julie Erhardt, drew from information out of the Division of Corporation Finance reviews to summarize and categorize our comments on IFRS filings thus far. That speech is also available on the

SEC website.[3] Julie divided her remarks into a discussion of comments addressing "presentation" and "disclosure." She then divided that latter group into three categories or "buckets" of comment types on "disclosure": (i) omitted disclosure; (ii) disclosure that is difficult to understand; and (iii) "shallow" disclosure. In talking with Julie, there so far appear to be a surprising number of examples of apparent omissions of information that is required by IFRS. As Julie discussed in her AICPA remarks, the reasons are unclear. This may be a phenomenon associated with filers' initial IFRS adoption, but I personally find it to be a potential cause of concern.

I am aware of a nervousness that registrants and their advisors have when their financial statements are the subject of extensive comments from the SEC staff. When I was in private practice, I spent a good deal of time working with companies that were having to restate their financial statements, for a variety of reasons. Restatements are never easy, nor is the decision to restate one that is ever made lightly — by U.S. companies or foreign private issuers. But we also realize at the SEC that for many European companies there has been an added hurdle, in that the financial statements have necessarily been finalized by shareholder vote, and that finality cannot be easily undone by a company's management and the Board of Directors on their own. We have worked with foreign private issuers confronting this problem in the past and are sensitive to it. At the same time, however, IFRS requires that companies handle material errors retrospectively, and we expect companies filing financial statements under IFRS to comply with those accounting standards in their entirety.

Convergence of IFRS and U.S. GAAP

Let me turn for a moment to convergence (and our roadmap). Last year was the first year for many companies to use IFRS. The SEC staff is necessarily also gaining more experience with IFRS, and enhancing our own understanding of the accounting standards. Right now, foreign private issuers must reconcile their financial statements to U.S. GAAP if those statements use IFRS (or another home country GAAP) in the first instance. Many of us would like to see an end to that reconciliation requirement for IFRS filings, and we have a project plan to consider that possibility by 2009. Expanded use of IFRS and the SEC staff's review of those filings (which I have been describing) is an important step in our roadmap for the end of reconciliation. The continuing convergence efforts of the Financial Accounting Standards Board in the U.S. and the IASB are also an important step in that roadmap. It is not an important step, in fact not a step at all, that IFRS be exactly the same as U.S. GAAP. Nor is it part of the SEC staff's roadmap that we become the arbiter of IFRS. As our comments to and correspondence with foreign private issuers that adopted IFRS for the first time last year become available on the SEC website, I encourage you to look directly at those comments and put them to the test. I believe you will see that they reflect this same mindset that I have been sharing with you today.

The SEC staff roadmap laid out a path for a possible end to reconciliation by 2009, and the staff continues to follow that roadmap and to undertake the steps it had contemplated. It's too early now to tell where it will end, but our commitment to doing our part remains as strong as ever. Part of that involves understanding the application of IFRS and understanding the effects of IFRS on investors and the U.S. markets. We are actively engaged in seeking and analyzing the information we need and that is a key project

for us in 2007. We are also considering other avenues for gathering information, beyond the reviews I have described, and we may have more to say on that in coming months.

The Importance of Cross-Border Regulatory Conversations

The regulatory partnership as we all respond to the expanded use of IFRS is the final thing I would like to discuss in this context. I do not know if Fabrice will be speaking about this or not, but last August the SEC and CESR adopted a joint work plan focused on financial reporting matters. The work plan (which is available on the SEC's and CESR's websites)[4] is primarily concerned with the application by internationally active companies of IFRS in filings (or listings) in the United States and U.S. GAAP in filings (or listings) in the European Union. In addition, the staffs of the SEC and CESR were charged with forging a close dialogue on the modernization of financial reporting and disclosure information technology and regulatory platforms for risk management. That close dialogue between the staff of the SEC and their regulatory counterparts in fact preceded the work plan. It has continued, and we have already had two meetings with CESR-Fin under the work plan and have another regular meeting scheduled in June.

With regard to Corporation Finance's review of specific company filings using IFRS, we are also aided by close coordination with our international counterparts. Because we are at a relatively early point in our review of IFRS filings, however, we have thus far had only limited filing-specific contacts with foreign regulators about IFRS financial statements, as contemplated by the work plan with CESR. We expect more of these contacts to arise naturally in the coming months as we finish up many more reviews. We look forward to those contacts, and we take very seriously our obligation to enter into them with an open mind. In advancing the important dialogue on financial reporting among various regulators, I think we will all benefit from an improved understanding of IFRS, a more consistent application of those standards, and therefore, and most importantly, from an improved transparency and usefulness for investors of financial statements using IFRS.

Conclusion

In closing, let me just thank all of you for your time and attention. In preparing for my remarks today, I noted that my predecessor Alan Beller had spoken at this conference for the last three years. Paul Dudek, whom I mentioned earlier, spoke at the first two. The speaker, as well as the remarks, may change from year to year, but our commitment to this dialogue does not. Likewise, the currency of any particular topic will vary, but the interest all of us have in securing robust global markets and capital formation along with strong investor protections does not waiver.

I have no doubt that in the future we will all have other new and exciting topics to discuss. The one that comes to mind most readily is the growing importance of XBRL, which honestly isn't new anymore. This is a very exciting development at the SEC to which our Chairman, Chris Cox, has shown a deep and steady commitment. But whatever the topics of the coming years, I know that I and others at the SEC will be eager to continue to foster and promote, and learn from, our dialogues with our counterparts and market participants around the world. Thank you again for your time

today. I look forward to the rest of this conference.

Endnotes

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[1] "A Securities Regulator Looks at Convergence," Donald T. Nicolaisen, Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission, April 2005, available at http://www.sec.gov/news/speech/spch040605dtn.htm.

[2] "An Expansive View of Teamwork: Directors, Management and the SEC," John W. White, Director, Division of Corporation Finance, U.S. Securities and Exchange Commission, September 25, 2006, available at http://www.sec.gov/news/speech/2006/spch092506jww.htm.

[3] "Remarks Before 2006 AICPA National Conference on Current SEC and PCAOB Developments," Julie A. Erhardt, Deputy Chief Accountant, Office of the Chief Accountant, U.S. Securities and Exchange Commission, December 12, 2006, available at http://www.sec.gov/news/speech/2006/spch121206jae.htm.

[4] See "SEC and CESR Launch Work Plan Focused on Financial Reporting," August 1, 2006, available at http://www.sec.gov/news/press/2006/2006-130.htm.

http://www.sec.gov/news/speech/2007/spch011507jww.htm
