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September 30, 2002

Subject: CSA Proposed National Instruments 51-102 *Continuous Disclosure Obligations* and 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*

PricewaterhouseCoopers is pleased to comment on the Canadian Securities Administrators proposed National Instruments 51-102 *Continuous Disclosure Obligations* and 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. We endorse efforts to create an integrated disclosure system in Canada under which new investors and existing shareholders alike have access to consistent financial information. In addition, we support the move to permit the use of U.S. generally accepted accounting principles ("U.S. GAAP") for filing of financial statements by Canadian reporting issuers.

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We have elaborated on our views in responding to certain questions raised by the CSA in Appendix I. Our focus therein is on requests for comments on questions where we believe the role and experience we have in capital markets activities make our comments particularly relevant. We have also included some additional observations in Appendix II.

If you wish to discuss our comments, please contact Michael A. Tambosso (michael.a.tambosso@ca.pwcglobal.com or 416-941-8388) or Vicki Kovacs (vicki.kovacs@ca.pwcglobal.com or 416-941-8363).

Yours very truly,

"PricewaterhouseCoopers LLP"

Chartered Accountants

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APPENDIX I

(a) 51-102 Continuous Disclosure Obligations – Specific questions raised by the CSA

1. ***Criteria for Determining Financial Statement Filing Deadlines*** **– The Rule uses TSE non-exempt company criteria to identify issuers subject to shortened filing deadlines for annual and interim financial statements and MD&A. Those criteria include having net tangible assets of at least $7.5 million, or in the case of oil and gas companies, proved developed reserves of at least $7.5 million. These criteria mean that the more stringent 90 and 45 day filing deadlines will apply to Canada's most senior issuers, many of which are currently subject to the same filing deadlines in the United States. They are different from the market value threshold that is proposed to trigger the AIF filing requirement in the Rule, in recognition of the fact that an issuer's market value is not always an appropriate way to assess its ability to prepare financial disclosure within shorter times.**

We agree that shorter filing deadlines in Canada are appropriate and support a change to 90 days after year-end for annual financial statements and 45 days after the period end for interim financial statements. For over 30 years, U.S. SEC registrants have coped with similar filing deadlines. We see no substantive reason why Canadian companies could not achieve the same.

We are not convinced that a tiered system of filing deadlines, as proposed by the CSA, is appropriate and believe that all issuers should be subject to the same filing deadlines. We do not believe there are any meaningful criteria that could be developed to distinguish the information needs of investors. Once an issuer gains access to the capital markets, its capital raising potential becomes theoretically unlimited. Accordingly, all companies should be subject to the same requirements.

The SEC recently announced changes to filing deadlines to be phased in over three years with the result that deadlines will be accelerated for certain issuers to 60 days after year-end for annual financial statements and 35 days after the period end for interim financial statements. Moving to such filing periods in Canada seems too much of a change at this time.

(a) Is it appropriate to use TSE non-exempt company criteria to determine deadlines for filing financial statements? If not, why not, and what other criteria should we consider?

Refer to our comment above.

If the final Rule is based on the TSE non-exempt company criteria or some other measure (such as market capitalization as referred to in 1(d) below), guidance will need to be included on how changes in these measures would impact an issuer's filing deadlines. Measurements that drive filing deadlines should be known by the reporting issuer well in advance of the reporting period end in order for the issuer to plan and schedule the work necessary to fulfill all of its responsibilities.

(b) Is your view affected by the fact that some issuers that are eligible to use the short form prospectus regime in NI 44-101 would have 120 days to file annual financial statements?

As noted in our previous comment, we do not believe a tiered system of filing deadlines is appropriate. If a tiered system is put in place, an issuer eligible to use the short-form prospectus regime should not have 120 days to file annual financial statements.

(c) Is your view affected by the fact that the SEC has proposed imposing even shorter filing deadlines than the ones we have proposed, for issuers that have a public float of US$75 million and are therefore eligible to use the US short form prospectus regime? Why?

No. In a PricewaterhouseCoopers' submission on the SEC proposals, it was argued that improved information flow would not be achieved by the shorter filing deadlines proposed and that the existing reporting due date structure under U.S. requirements is appropriate. We have included a copy of this submission for your information in Appendix III.

(d) Is the $75 million criteria that is used in the Rule as one of the triggers of the AIF requirement, and in NI 44-101 for short form prospectus eligibility, appropriate?

If a tiered system is put in place, the $75 million criteria is appropriate.

2. *Elimination of Requirement to Deliver Financial Statements* – As noted above under "Summary of Significant Changes to Existing CD Requirements", the Rule will eliminate mandatory delivery of financial statements and MD&A to all securityholders. Issuers will only be obligated to deliver copies of these documents to securityholders that request them. Issuers will have to disclose annually in their AIFs and information circulars that the financial statements and MD&A are available without charge and how to obtain them. Do you agree with this approach? Why or why not? What approach would you suggest?

We agree with this approach.

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3. ***SEC Developments*** **- Under the heading "Recent SEC Developments" above, we identify SEC Releases that propose changes to corporate disclosure requirements for SEC registrants. Should we change the Rule to reflect the proposed SEC requirements?**

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I Filing deadlines

See our previous comments regarding filing deadlines.

Critical Accounting Policies Disclosure

We enclose a copy of a PricewaterhouseCoopers' submission on the SEC proposals in Appendix IV.

4. *Combination of Financial Statement and MD&A Filings* – We are considering amending the Rule so that financial statements and MD&A would have to be filed at the same time, as one filing. MD&A contains important discussion of financial statement disclosure, and is already subject to the same filing deadlines as financial statements. Should we combine financial statement and MD&A filing requirements?

We agree that this would be appropriate.

MD&A does contain important discussion of financial statement disclosure. As a result, the disclosure in the financial statements and MD&A, on occasion, may be duplicative. For example, in discussions related to the performance of operating segments in the MD&A, it may be useful to actually include the disclosures required for financial statements in the MD&A; a similar comment applies with respect to MD&A disclosure requirements regarding valuation of financial instruments. A possibility then is to simply put a reference in the financial statements to the material in the MD&A and not repeat this information in the financial statements. In fact, there are limited examples of this in practice, but regulator reaction has been mixed. We believe it would be helpful for the proposed Rule to provide definitive guidance on whether it is considered permissible for issuers to include GAAP information in the MD&A, instead of the financial statements, provided the financial statements include a clear and specific reference to where this audited information can be found in the MD&A.

5. *Disclosure of Restructuring Transactions in Information Circulars* - Item 13.2 of Form 51-102F5 *Information Circular* requires an issuer to provide disclosure regarding restructuring transactions.

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(c) Does item 13.2 require disclosure about the appropriate entities for any transaction that is subject to this item? If not, which entities should be added or excluded, and why?

Item 13.2 requires "to the extent necessary to enable a reasonable securityholder to form a reasoned judgment, the disclosure (including financial statement disclosure) for each entity the securities of which are being changed, exchanged, issued, or distributed, and for each entity that would result from the restructuring transaction, prescribed by the form of prospectus that the entity would be eligible to use for a distribution of securities in the jurisdiction".

Firstly, we query the use of the qualifier "to the extent necessary to enable a reasonable securityholder to form a reasoned judgment". The information requirements for prospectuses are explicitly set out in existing securities legislation. These requirements indicate that the objective of a prospectus is to provide information concerning the issuer *that an investor needs in order to make an informed investment decision*. The proposed disclosure requirement for information circulars implies, however, that some of this information, while necessary to make an informed investment decision for purposes of a prospectus, is not necessary to make a reasoned judgement for purposes of an information circular. It is not clear how a preparer of an information circular would identify those disclosures that are not required. For example, it is difficult to understand why anything less than prospectus level disclosure in a reverse take-over transaction, also known as a back-door listing, would be appropriate. Given this lack of clarity, we would prefer to see the qualifier removed from the final Rule. If the CSA believes that certain information required for a prospectus could be excluded for purposes of an information circular, additional guidance should be provided to identify the information that could be excluded. We believe such exclusions should be few, if any, in number.

Secondly, we seek clarification on the meaning of the phrase in parentheses "(including financial statement disclosure)". Is this meant to encompass all the requirements for financial statements prescribed by the applicable form of prospectus (e.g., Canadian or U.S. GAAP, number of years of financial statements to be included, significant acquisitions and pro forma financial statement disclosure, etc.)? Also, what exactly does the term "disclosure" mean? In particular, it would be helpful for the final Rule to clarify the level of auditor involvement with respect to financial statements that must be provided for purposes of an information circular. For example, must historical annual financial statements be audited, is a comfort letter required for unaudited financial statements included in the circular, should a compilation report be provided on pro forma financial statements? Once again, it is difficult to understand why these reports would not be required when the transaction is a reverse take-over or other type of restructuring transaction, yet the proposed Rule is ambiguous in its requirements in this respect.

(d) The requirement in item 13.2 to include disclosure prescribed by the prospectus form is qualified by the words "to the extent necessary to allow a reasonable securityholder to form a reasoned investment decision". Is this clear enough? If not, how could we make the requirement clearer?

Refer to comments in 5(c) above.

(e) Would it be preferable to prescribe a separate form of information circular for certain restructuring transactions (such as reverse take-overs) similar to new CDNX Form 3B Information Required in an Information Circular for a Qualifying Transaction?

We agree that it would be preferable to prescribe separate forms of information circulars.

(f) Should item 13.2 specify which disclosure items in the relevant prospectus forms must be given for certain transactions (such as reverse take-overs or issuances of exchangeable shares)?

Refer to our responses to questions 5(c) and (e) above.

6. *Significant acquisitions disclosure* -The proposed significance tests for business acquisitions in the Rule were the subject of extensive comments when the prospectus rules were being reformulated. The CSA analyzed the comments and finalized the tests in the prospectus rules. Several commenters said that significant acquisition disclosure should be required in CD, not just in prospectuses. Many commenters expressed the view that Canadian acquisition disclosure rules should parallel the SEC Rules. The significance tests proposed in the Rule are very similar to the SEC Rules and are consistent with the significance tests in the prospectus rules. The proposed Rule requires one, two or three years of financial statements depending on whether an acquisition is significant at a 20%, 40% or 50% threshold. Would it be better or worse to have only one threshold for determining significance with a requirement for two years of financial statements when the threshold is met? If you support this approach, what would you suggest as an appropriate threshold and why?

We support the significance tests proposed in the Rule. As noted by the CSA, they are consistent with the significance tests in the prospectus rules.

11. *Credit Supporters and Exchangeable Shares* – Under the heading "Possible Changes to the Instrument" above, we discuss certain changes to the Rule relating to credit supporters and exchangeable share issuers that we are considering incorporating into the Rule.

(a) We describe three options for addressing CD obligations in credit supporter situations. What are your comments on the merits of these three options? If none of them are appropriate, please suggest other options and justify them.

We would favour the third option for addressing CD obligations in credit support situations, i.e., the credit supporter itself should be deemed to be a reporting issuer with its own CD obligations. We note that this appears to be the approach most consistent with the U.S. approach under which guarantees of securities are considered securities themselves and, therefore, subject to specific registration requirements. However, we also note that the U.S. requirements go on to identify circumstances where modified financial information may be provided. Such a possibility is not reflected in any of the options under the proposed Rule and should be considered.

(b) We describe two options for addressing CD obligations in exchangeable share situations. What are your comments on the merits of these options? If neither of them are appropriate, please suggest other options and justify them.

We believe that only the parent issuer should be deemed to be a reporting issuer with its own CD obligations. Therefore, we favour the latter option suggested. However, we are not sure why an SEC issuer has been singled out in the latter option. Presumably the reference to "appropriate jurisdictions" refers to Canadian jurisdictions and therefore, an SEC issuer that is required to file CD in the appropriate Canadian jurisdictions would be doing so because it is already a reporting issuer in Canada?

(c) In each of the credit supporter and exchangeable share situations, should we require the credit supporter or parent to comply with all CD obligations under the Rule, or should the credit supporter or parent only be required to file certain types of documents concerning the credit supporter, such as financial statements and MD&A?

We believe that the credit supporter or parent should be required to comply with all CD obligations under the Rule.

APPENDIX I

(b) 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* – Specific questions raised by the CSA

2. Have we included the appropriate countries in the definition of "designated foreign jurisdiction"? If not, please explain in detail why any countries should be added or removed, with reference to the laws of that country.

The proposed Rule provides that SEC foreign issuers and designated foreign issuers may satisfy the requirements of Canadian securities legislation by complying with the requirements of the SEC or designated foreign jurisdictions, as applicable and concurrently filing and sending in Canada the documents that were filed and sent under SEC or designated foreign jurisdictions.

It is not clear from the proposed Rule or the companion policy how these 15 jurisdictions were selected or why other jurisdictions having what might be viewed as equivalent or better frameworks in place are excluded as designated foreign jurisdictions. For example, we believe that Norway merits as much as some of the countries noted for inclusion as a designated foreign jurisdiction. Perhaps there should be allowances in the final Rule for including other countries as designated foreign jurisdictions as the Commissions become more knowledgeable about practices in other countries.

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APPENDIX II

51-102 Continuous Disclosure Obligations
Additional Comments

Item 1.1(2) - Definition of U.S. GAAP and U.S. GAAS

The definition of U.S. GAAP in the proposed Rule refers to principles that the SEC has identified as having substantial authoritative support. However, it is not clear from this definition what those principles are. U.S. literature (refer to U.S. Auditing Standards AU Section 411, *The Meaning of "Present Fairly in Conformity with GAAP"*, paragraph .05) establishes a hierarchy of sources of acceptable accounting policies in the United States. We believe it would be appropriate for the definition of U.S. GAAP in the proposed Rule to refer to this literature.

We also suggest a revision to the definition of U.S. GAAS. "U.S. GAAS" means generally accepted auditing standards in the United States of America, *in particular as set out in the Statements on Auditing Standards issued by the American Institute of Certified Public Accountants,* and as supplemented by…".

Item 4.7(3) - Preparation of financial statements in accordance with U.S. GAAP

We agree with the proposals related to filing financial statements prepared in accordance with U.S. GAAP/GAAS. However, the proposed Rule requires a two-year transition period during which time issuers would have to provide a reconciliation to Canadian GAAP. We believe that, with the extent of harmonization that has occurred, the ongoing work in that direction, and for other reasons, a one-year transition period would be sufficient.

Item 4.13(2) - Interim financial statements and comparative figures

CICA Handbook Section 1751, paragraph .35 requires that comparative information be provided in interim financial statements when the Section is first applied unless it is impracticable to do so. In the event that it is impracticable, Section 1751 requires such information as is available to be presented nonetheless, and the fact that it has not been prepared in accordance with the Section to be disclosed.

Given this specific requirement of Section 1751, the requirement in Item 4.13(2) of the proposed Rule regarding comparative figures in interim financial statements of first time reporting issuers should be revisited. Perhaps language similar to that used in OSC Rule 52-501, Financial Statements, Part 3.1 would be more appropriate. This comment also applies to Item 8.14.

Item 4.14 - Change of auditor requirements

The change of auditor requirements generally apply for terminations *or resignations*. However, throughout the proposed Rule, the language in certain instances refers only to the date of termination, rather than the date of termination *or resignation* (including, for example, Item 4.14(1) definitions of "relevant period" and "unresolved issue", Items 4.14(4)(a) and (b), Item 4.14(6)(a) and Item 4.14(8)(c)). In addition, we query whether the proposed Rule should include a definition of "resignation" similar to that included in National Policy No. 31, Change of Auditor of a Reporting Issuer ("NP 31").

Items 4.14(6)(e)(i)(C) and 4.14(6)(e)(iii)(C) require the notice of change of auditor to state whether the reporting issuer authorized the former auditor "to respond fully to inquiries by *any* successor auditor" concerning the disagreement or unresolved issue. This represents a subtle change in language compared to NP 31, paragraph 4.6(d)(i)(c), which referred to "inquiries of *the* successor auditor". Given that there can only be one successor auditor, it is not clear why the revised requirement refers to "any" successor auditor. For example, is this meant to refer to any other firm that was consulted, or only the one that receives the appointment?

Disagreements

The term "disagreement" is defined in Item 4.14(1). It is our understanding that there are far fewer instances of disagreements reported under Canadian requirements than similar U.S. requirements. We believe that it would be helpful to set out more explicitly when a disagreement has occurred or not occurred. As a minimum, we recommend the final Rule, or its companion policy, should include the following guidance from Regulation S-K Item 304:

> The term "disagreements" as used in this Item shall be interpreted broadly, to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term disagreements does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.
>
> The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level; i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.

Although not explicitly set out in the SEC rules, we understand that parties generally understand the following type of guidance is also applicable, and, therefore, something similar would be appropriate for the Rule or companion policy:

> Where it is clear that the issuer disagreed with the auditor's proposed accounting or audit scope but reluctantly accepted the auditor's position in order to obtain a "clean" report, a reportable disagreement may still exist. The subsequent rendering of a "clean" report does not, by itself, remove the necessity for reporting a disagreement.

Companion Policy

Item 6.5(5) – Acceptable pro forma adjustments

Item 6.5(5) indicates that pro forma adjustments should be limited to those that are directly attributable to the specific acquisition transaction for which there are firm commitments and for which the complete financial effects are objectively determinable. Questions frequently arise on what constitutes a "firm commitment".

In particular, a recent example comes to mind where there appeared to be differing views between the Commissions, the TSX, the accounting firms, and professional literature in terms of what constitutes a "firm commitment". This example relates to monies being raised, on a best efforts basis, to fund an acquisition. In terms of a pro forma adjustment for this fundraising, can there be a "firm commitment" when the fund raising is on a best efforts basis? If so, how does this meet the definition of a "firm commitment"? It would be helpful if additional guidance on "firm commitments" is included in the final Rule or companion policy to assist in this assessment.

Item 8.4(2) – Interim financial statements

Item 8.4(2) requires a business acquisition report to include interim financial statements for the periods noted therein. However, the required content of these interim financial statements is not clear. For example, an "interim period" in Item 8.4(2)(a)(i) is defined by Item 1.1(2) as the year-to-date three, six or nine month period. Does this mean that a current quarter statement of income, retained earnings and cash flows is not required for a BAR and only year-to-date information is required? Also, it is not clear whether these interim financial statements must include notes.

Item 8.6(1) – Generally accepted accounting principles

Item 8.6(1)(a) clearly indicates that financial statements prepared in accordance with Canadian GAAP may not be prepared in accordance with differential reporting options as set out in Section 1300 of the CICA Handbook. We are often asked whether the historical financial statements of an acquiree, that was formerly a private enterprise and that is required to file its historical financial statements with a securities commission as a significant acquisition, must be updated to include the disclosures for public enterprises identified throughout the Handbook. We believe this is the case. It would be helpful if the final Rule or its companion policy would indicate the CSA's position on this.

We find the requirement in Item 8.6(1)(b) to be ambiguous. At a minimum, we believe that Item 8.6(1)(b) should refer to *generally accepted* accounting principles. For example, we note that a similar requirement in current prospectus rules refers to foreign generally accepted accounting principles. Also, as the requirement is presently worded, a degree of judgment will be involved regarding what it means for a foreign GAAP to "cover substantially the same core subject matter as Canadian GAAP…". There is no established definition for "core subject matter of Canadian GAAP". Moreover, if there is a "core", what is a company to do if a foreign set of GAAP touches on most, but not all, of the core subject matter? In our view, it would be preferable to refer not to the result, but to the process, and to accept accounting principles that are established in a foreign jurisdiction based on a due diligence and consultation process similar to that applied by the CICA, FASB or IASB.

Item 8.6(3) requires that annual and interim financial statements included in a BAR must be prepared *in accordance with the same accounting principles for each period presented*. We interpret this to mean that the historical annual and interim financial statements included in the BAR must be prepared in accordance with the same body of generally accepted accounted principles. However, within those principles, an enterprise may change an accounting policy and, where permitted by transitional provisions, account for that change prospectively. As Item 8.6(3) is currently worded, there is some concern that it could be read to preclude accounting for a change in accounting policy in this manner since it requires the financial statements to be prepared “in accordance with the same accounting principles for each period presented”.

Current prospectus rules require that, where foreign GAAP financial statements have been reconciled to Canadian GAAP by a foreign auditor, the foreign auditor must provide a letter to the regulators discussing the foreign auditor’s expertise to audit the GAAP reconciliation and to determine that the foreign auditing standards applied are substantially equivalent to Canadian GAAS. We note that a similar requirement does not appear to have been included in the financial statement requirements for BARs. A comment from the CSA confirming that this letter is not required for BARs would be helpful as this question will undoubtedly be raised in the future given the prospectus requirement. Given the ultimate goal of an integrated disclosure system, we would imagine that, at some point, this difference will also be eliminated.

Form 51-102F2 – Management discussion & analysis

Item 1.2 – Summary of quarterly results

We note that in Instruction (ii) the term "fully diluted basis" should be "diluted per share basis".

Form 51-102F5 – Information Circular

Item 8.3 – Equity compensation plans

We note that in Instruction (i) the reference should be to section *3870* of the Handbook, not *3780*.

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Appendix V

Extract from PricewaterhouseCoopers' submission on OSC Rule 52-501 (dated June 12, 2000) relating to requirements for balance sheet line items

The Ontario Securities Commission (the "Commission") has indicated that the proposal to require presentation of certain line items in annual and interim balance sheets has been added to ensure a consistent minimum level of disclosure in *interim* balance sheets. While we agree that there should be certain consistencies between a reporting issuer's annual and interim *financial statements*, we do not agree that this necessitates prescribing a minimum level of disclosure in annual balance sheets. This implies that there is a problem with the current level of disclosure in annual balance sheets.

We recognise that minimum requirements for balance sheet presentation are set out in both International (eg. International Accounting Standard IAS 1, Presentation of Financial Statements) and U.S (eg. SEC Regulation S-X, Article 5.02) requirements. If a need for similar requirements in Canada has been identified (has it?), we would support a project to develop an appropriate Canadian requirement. As specific disclosure requirements for other financial statements are set out in CICA Accounting Standards, we would recommend that the CICA Accounting Standards Board, with its due process and expertise, determine any specific disclosure requirements for balance sheets.

Otherwise, we believe the Commission's proposal is inappropriate for the following reasons:

- the proposal fails to recognise that the structure of an issuer's balance sheet will vary depending on the nature of the business. For example:
- ▪ the minimum disclosure requirements in subsection 2.1(2) are less relevant for an issuer primarily engaged in banking or insurance, than for one in, say, manufacturing. IAS 1, which similarly prescribes minimum balance sheet presentation requirements, also recognises this need for flexibility by stating in paragraph 68(b) that *"the descriptions used and the ordering of items may be amended according to the nature of the enterprise and its transactions, to provide information that is necessary for an overall understanding of the enterprise's financial position"*. In its current form, the Proposed Rule does not acknowledge this relevancy and flexibility.
- ▪ CICA Accounting Standard 1510, Current Assets and Current Liabilities, states in paragraph 9 that *"assets and liabilities are normally segregated between current and non-current. However, the segregation of assets and liabilities between current and non-current may not be appropriate in financial statements of enterprises in certain industries"*. It appears to us, however, that the Proposed Rule attempts to prescribe a current/non-current type balance sheet classification for certain asset/liability classes (ie. temporary and long term investments, and current interest bearing liabilities and long term debt) for all issuers. As noted, this is at odds with CICA 1510 and may not be appropriate for all issuers;

- embedding minimum financial line items in a Rule can create an issue as generally accepted accounting principles (GAAP) change. The Rule should not be written to require revision as GAAP requirements change, which is a risk with the proposed prescriptive approach.

We acknowledge that interim financial statements are, in many cases, far too aggregated to be useful to most readers. In fact, many issuers are presenting more disaggregated information to certain user groups. We believe, however, that it is not necessary to specify line items as proposed. We believe that it would be desirable to simply require that the level of disclosure in interim financial statements be consistent with the most recent annual financial statements.

Consequently, we recommend that the Commission reconsider the proposed requirement in subsection 2.1(2). We propose that an approach similar to the one in paragraph 12 of the CICA Accounting Standards Board's Exposure Draft, Interim Financial Reporting (the "ED"), would be more appropriate. Using this approach, the requirement in subsection 2.1(2) could be deleted and subsection 2.2(4) could be changed to read:

The interim financial statements referred to in paragraph (1) shall include, at a minimum, each of the headings, subtotals and line items included in the issuer's most recent annual financial statements.

If the Commission still believes that minimum line items should be included, we believe the Proposed Rule will need to be expanded to address additional areas including:

- materiality (eg. at present, all line items appear to be required regardless of materiality);
- guidance for totals and subtotals, and
- further consideration of the minimum line items to be required. We believe that the current proposals are ambiguous and may not allow for sufficient flexibility or adequately address the current types of balances that can arise. For example, we note the requirement to present the amount of "current interest bearing liabilities". We do not understand the relationship between this and accounts payable, or between this and what might otherwise be the current portion of long-term debt. And we wonder whether "interest bearing" relates to the terms of the debt, or whether it includes items that may be discounted because they do not bear interest, or whether it includes items that are equity in form but are included in liabilities (and have interest imputed) due to GAAP requirements.

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May 23, 2002

Mr. Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Re: File Number S7-08-02

Dear Mr. Katz:

We at PricewaterhouseCoopers LLP appreciate the opportunity to comment on the Commission's Proposed Rule: *Acceleration of Periodic Report Filing Dates and Disclosure Concerning Website Access to Reports* (the "Release" or the "proposed rule").

In addressing the issues surrounding the flow of information to investors and timeliness of disclosures, the Commission has touched upon some important matters for investors and market professionals who, in turn, provide analytical data to the public.

We applaud the Commission's most recent efforts to improve disclosure through its interpretive guidance articulated in Financial Reporting Releases Nos. 59, 60 and 61. These releases, together with other initiatives of the Commission and its Staff serve as the cornerstone for the rulemaking that will follow and for the healthy debate which will help to maintain the US capital markets as the strongest and most liquid markets in the world.

Accelerated Reporting Deadlines

We fully support Chairman Pitt's plans to modernize and comprehensively improve the current corporate reporting and disclosure system. Achievement of this goal is necessarily a long-term undertaking and we appreciate that this proposal is only one of a series of steps intended to accomplish the Commission's overall purpose.

We also agree with the Commission's plans to encourage, if not ultimately require, greater emphasis on "current" disclosures – rather than sole adherence to mandatory and periodic financial reporting timetables. That stated, though, "current reporting" is not necessarily the result of "faster reporting". Rather, we believe current reporting is the consistent and continuous delivery of credible, relevant and reliable accounting and non-accounting information to the market.

In proposing this rule, the Commission notes that over 30 years have passed since it last changed the 10-Q/K filing deadlines and that information included in current reports often is stale by the time the reports are filed. While we agree with the Commission that markets must have access to information that is clear, accurate and timely, we have significant reservations about the efficacy of certain aspects of the proposed rule. We believe that the proposal, as currently drafted:

- aims to fix a current regimen of reporting deadlines that, at best, is not broken and, at worst, is not a pressing problem in today's corporate reporting maelstrom;

- poses incremental risks to the quality of publicly-reported data that outweigh the benefits to be derived; and

- is too reliant on anecdotal (rather than empirically-determined) information about the nature of pre-filing preparatory activities registrants perform between the earnings release date and the quarterly or annual reporting dates, the duration of time necessary to accomplish them, and the different circumstances and experiences among registrants.

It is evident to us from public data that certain registrants possess the ability to report in shorter timeframes than others. Some of those registrants, and those who analyze and follow them, believe that their "speed to market" with investor communications is an indication of financial quality and sophistication. That may well be true, but even if it is, the SEC should allow market forces, rather than regulations, to set the height of the promptness hurdle.

Whether information is reported by the 30th day after each quarter-end or by the 45th day, the SEC should recognize that the reports filed are still metered doses of standardized information being fed to the marketplace at 90-day <u>constant intervals</u>. In our markets, what should, and what will, distinguish one registrant from the other is the quality of what they report and the frequency with which they communicate data regarded as analytically significant.

We surmise that, in some measure, the release is premised on the notion that, at the time a registrant publicly announces its financial results, there exists a "full" set of GAAP primary financial statements – though not necessarily all accompanying footnote disclosures and MD&A. In our experience, that is not always the case. In a number of cases, even among large, sophisticated registrants, earnings releases are prepared based on consolidated financial data, but sometimes without the benefit of having fully completed detailed account analyses. Such additional analyses and related discussions are, however, completed under the current reporting deadlines by the time the 10-Q/K is ready for filing.

Not all registrants are the same, and the foregoing does not in our view broadly impugn the integrity of earnings release data. However, it recognizes that data produced with "speed" as its guiding principle brings with it certain quality risks that are mitigated by the time such data is fully analyzed and reviewed by those responsible for the formal SEC reports which follow.

The introduction to the release states, in a number of places, that notwithstanding significant advances in technology and communications over the past three decades, the reporting deadlines have not been amended during that period. We do not believe there is a direct linkage between advances in computer technology and advances in the ability of preparers to cope with:

- Materially elevated expectations on the part of regulators, shareholders, the public and analysts that independent accountants, senior registrant officials and audit committees have subjected financial data to thorough review/audit before it is placed on file in the public record.
- An ever-increasing volume and velocity at which accounting standards and interpretations are issued.
- An immeasurable increase in the complexity of the standards over which preparers must have a "command" in order to prepare basic GAAP financial statements.
- Significant shifts in the business paradigm, whereby registrants conduct basic business operations through joint ventures, alliances, contractual arrangements, etc. and do so on a global basis, necessitating the collection of data from third parties and from the four corners of the earth in order to "close" their books.

Another objective stated in the introduction to the release is to decrease the time gap between the earnings release date and the availability of full 10-Q/K data. We believe this rule proposal will not be the solution to the perceived problem. The SEC has observed that there are sometimes "problems" with press releases, some but not all of which would be solved by the concurrent availability of additional GAAP data, MD&A, etc. If that is the case, and we suspect that position has merit, we believe that the proposed rule should not be directed at the end result of the reporting process, but should address the beginning and the middle of the communication process as its principal target. After all, if the source of at least some of the concern rests with the reporting quality and characteristics of the earnings release, then focusing solely on the periodic reporting deadline may not be the solution.

In some important instances, the achievability of the Commission's objectives in proposing the rule amendments seems undermined by information or data referenced by the Commission itself. We have looked back at the NIRI survey and conducted an informal survey in our own practice. The findings are notably consistent and at odds with the basic premise of the rule proposal. Approximately 67% of public companies participating in the PwC survey indicated a concern about being able to comply with the reporting time compression contained in the proposed rule.

If the SEC's assumptions regarding the impact of technology and communication advances on the ability to prepare periodic reports more quickly had a sound basis, respondents would not be asserting the need for major investments of time and funds to be able to comply, as we have seen portrayed in the surveys cited. Our concern is that the shortened timeframes may inflict a serious hardship on many, if not the majority of, registrants, even those fully dedicated to the principles that the SEC has endorsed to improve the financial reporting landscape.

Further, the general assumptions contained in the proposed rule are also problematic to us in the sense that they do not adequately address the potential adverse effects on "quality." We believe that if the proposed rule is adopted as currently drafted, the quality of reported data will suffer, exposure to future restatements will increase and the financial reporting process, in which we have all invested so much in terms of analyzing and carefully considering data before making it public, could become vulnerable to a series of shortcuts necessitated by the accelerated deadlines.

We also note that, compounding the problem, the SEC does not currently allow registrants to create or lengthen the otherwise permissible reporting "lag" period related to investees, thus foreclosing a partial solution to one of the issues noted above. In addition, in Release 33-8098, the Commission has proposed new rules regarding critical accounting policies and estimates that would, if adopted, materially increase the amount of time required to prepare basic periodic reports.

The SEC has consistently and appropriately insisted on the highest quality goals for its own performance and for those it regulates. The current reporting climate does not justify changes to reporting timetables that will likely accentuate, rather than diminish, the focus on short-term, quarter-to-quarter thinking. Parties with material (and increasing) responsibilities for reporting financial data need time to properly discharge those responsibilities to the public. Those involved in building critical and sensitive relationships, such as those being nurtured between preparers, auditors and audit committees, cannot afford to rush through decisions that have potentially major investor protection consequences.

<u>Our Recommendations</u>

Should the Commission proceed with any rule changes in this area, an alternative and, we believe, more beneficial framework lies more in the realm of strengthening the basis for higher quality earnings releases, and in "value-based" "current" reporting. However, the regulatory leverage which the Commission currently possesses is derived from its periodic, after-the-fact, reporting rules. Accordingly, in these circumstances, a further alternative might be to more explicitly and better integrate the common conceptual and information bases for press releases and periodic financial statement filing activities, which leads us to propose the following:

<u>Establish the deadlines for periodic reports based on the earlier of a stated number of days after the date of an "earnings press release" or the existing deadline.</u>

Affirmation of the quality of the current data disseminated to the public by way of an earnings press release can be achieved by demonstrating the ability to file full GAAP Form 10-Q/K data within a relatively short time period thereafter. We believe that, for interim periods, 20 days should be sufficient time to permit the several participants in the financial reporting process to carry out their responsibilities with respect to public financial data. For annual reports, a period of 45 days should suffice. Therefore, in the rule, the due date would be stated as the "earlier of" the existing 45/90 day requirement or the specified number of days after an "earnings press release."

<u>Require earnings press releases to be placed on file under a new Item of Form 8-K, defining such releases as those purporting to portray partial or complete GAAP accounting results for a period.</u>

Move forward expeditiously with the FASB, to develop relevant Key Performance Indicators ("KPIs") and a regimen to promote or require their disclosure by registrants on a current basis.

We believe that at least one alternative to requiring faster reporting would be to partially or fully exempt registrants that are making a good-faith effort to address the Chairman's priority of enhancing "current reporting". (For example, a registrant that discloses KPIs monthly on a consistent basis, placing such data on file in a Form 8-K, should be permitted to remain on the existing deadline scheme.) Relevant information to investors may, and in fact more frequently does, take the form of non-accounting information. In this era of complex accounting rules aimed at an equally complex business environment, rather than compressing the GAAP reporting timeframes, the SEC should encourage the development of pertinent and consistent KPIs and their continuous and timely delivery to investors and analysts.

Implement any deadline changes contemplated by the rule proposal only after registrants have had time to plan for compliance.

The empirical data gathered indicated that a clear majority of registrants would not be able to comply without significant investment in systems and changes in procedures. Accordingly, we believe changes of the type being proposed by the SEC should not be applicable until the 2003 calendar year, annual reports, to be followed by similarly accelerated quarterly reporting in calendar 2004. Should the SEC adopt our recommended deadline structure, we believe application could begin with calendar 2002 reporting.

Website Access Proposals

In large part, we agree with the Commission's proposals regarding website access. However, as we have noted below, we do not believe there is any basis to distinguish between registrants based upon size when setting an informational disclosure standard. The only exception we believe would merit being separately studied is the decision as to whether to apply a rule change to foreign private issuers. We believe their issues are sufficiently different as to warrant a separate study and rule proposal.

We also note that the rule proposals contain no incentives for registrants to enhance disclosures made through their own website. We believe this might be useful in stimulating compliance and improving quality of reported data.

* * * * *

PricewaterhouseCoopers

In the attachment to this letter, we have expressed our views on the specific questions that appear in the Release. Our responses should be considered in conjunction with the general comments expressed above.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the staff may have. Please do not hesitate to contact Jay Hartig (973-236-7248) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

Questions regarding the acceleration of filing due dates

1. ***To what extent would shortening the due dates for quarterly, annual and transition reports improve the flow of information to investors and the markets?***

We do not believe improved information flow can be achieved by the compression of GAAP reporting timeframes. "Current" reporting and "faster" reporting are neither synonymous terms nor congruent concepts, and the likely adverse consequences of shortening the due dates would not produce a desirable outcome. As noted above, the acceleration of the deadlines for the '34 Act forms has no impact on the interval between doses of data administered to the market.

2. ***Should the proposed filing periods be longer or shorter than proposed? What factors should we consider in making these filing periods longer or shorter?***

The existing reporting due date structure is appropriate and should not be changed, except as indicated in #4 below. A very significant factor to consider is the empirical evidence that so many registrants will not be able to comply, without incurring both significant added costs and organizational disruption. A second significant factor is that the quality of reported data will, inevitably, be placed at risk if the deadlines are shortened in the manner proposed in the release.

3. ***Should we only accelerate the annual report due date, or only the quarterly report due date?***

As previously stated, in our view, neither date should be accelerated; the risks simply outweigh the rewards. It is, however, true that in assessing the available survey data from a variety of sources, more registrants have indicated an ability to report within 60 days at year-end than can meet the 30-day quarterly reporting deadline.

4. ***Should we require companies to file their reports by the earlier of the existing deadlines or some earlier time after their first release of earnings information for that period? What timeframe would be appropriate? For example, would a 15 or 30 day period after the earnings announcement provide enough time for a company to finalize the corresponding periodic report? Would such a requirement delay earnings announcements?***

Yes. If any change is made, we endorse this alternative approach. We recommend 20 days for 10-Qs and 45 days for annual reports on Form 10-K. We acknowledge that this regimen might cause some earnings releases to be delayed but, in the usual circumstance, this would have no impact on the interval between the dates at which the market could expect to receive information and the market would either adjust to those dates or would provide an incentive for companies who delay earnings releases to move toward "best practices".

5. ***Are there ways other than our proposal to get important information out to investors sooner? Would our proposals cause a delay in the release of earnings announcements? Should we only require that certain information, such as the audited or reviewed financial statements and management's discussion and analysis, be filed on an accelerated basis?***

The data that is most valuable to investors and analysts, and that is susceptible to rapid preparation and analysis, is usually the "KPI" data. Such data often consists of information outside of normal financial reporting. While the proposal could cause some registrants to delay earnings press release data, we do not believe that consequence is necessarily bad. First, the interval at which information is received is not impacted. Second, if the more formal, structured periodic reporting data cannot be placed on file in a more timely fashion, we believe it may be an indicator about the extent of review afforded the announcement data. The data currently required to be in Forms 10-Q and 10-K should not be parsed for purposes of filing. The total mix of information in the periodic reports is intended to be used as a cogent unit.

6. ***Do the proposed Form 10-Q and 10-K due dates provide affected companies with enough time to prepare their reports? Do affected companies anticipate any significant problems in complying with the accelerated deadlines? If so, what types of problems?***

We believe that the proposed deadlines would not provide many companies with enough time to provide the careful, thoughtful analysis that is required to ensure that complex transactions, governed by even more complex standards, are thoroughly analyzed, appropriately accounted for and adequately disclosed.

Shortened deadlines may cause management to be too focused on the mechanical challenges of closing the books, rather than on analyzing and reviewing the data. It also reduces to unreasonable, and perhaps unachievable, levels the time that boards of directors, audit committees, outside counsel and the independent auditors have to complete their reviews, to meet, discuss and resolve matters of significance and to apply the quality control practices expected of these parties by the investing public, the SEC and Congress.

We suggest that deadline compression will result in increased restatements. Most restatements are detected and self-reported by registrants and auditors after they have had a chance to spend more time in a subsequent reporting period analyzing and reflecting on complex transactions which may have been "rushed to judgment" in a prior period under the existing, lengthier, deadlines.

Based on an informal survey of a subset of our clients, approximately 67% of respondents felt that they would incur significant additional effort or expense to comply with the new filing requirements. This is consistent with the survey results reported by the National Investor Relations Institute which showed that 60% and 54% of respondents would anticipate significant problems filing a 10-K and 10-Q, respectively, within the newly proposed timeframes.

Even though technology has been enhanced over the last several years, it is not the companies' systems that cause issues with compliance. Rather, it is the demands on the time of company personnel to complete sufficient analysis and to prepare meaningful disclosures that requires the current, longer reporting deadlines.

Further, an accelerated closing process likely will require companies to make more estimates and would, therefore, undoubtedly sacrifice precision for speed. It would also create pressure on auditors and audit committees to accept those new levels of imprecision and estimation as the company's "standard" for public reporting. This may be detrimental to companies and to investors as, in today's market, the mere hint of accounting inaccuracy results in a significant negative market response.

7. ***Would the proposal impose any significant costs on these companies? If so, what type and amount of costs? Are these short-term or one-time costs to adjust a company's reporting procedures, or long-term, ongoing costs?***

As outlined above, 67% of the respondents to our survey felt that shortening deadlines would result in "significant" additional costs. Among other things, companies would need to increase the number and quality of personnel and make major procedural changes to comply with the new requirements. After making these expenditures it is evident to us that the quality of reported data would still be "at risk".

8. ***Would auditors, audit committees and boards of directors have sufficient time to perform their review functions?***

No. We do not believe there would be sufficient time to devote the degree of thoughtful deliberation and analysis that the public expects (and deserves) of these parties in today's (or tomorrow's) environment. We observe that the progress made by the SEC, to get audit committees "involved" and focused on their public responsibilities may be slowed, or even reversed, if the new proposal is adopted in its present form.

9. ***It is our understanding that a company's audit (or review in the case of interim financial statements) is complete or substantially complete by the time the company issues its earnings announcement. Is our understanding accurate? How often do these earnings numbers change between their announcement and the filing of the corresponding periodic report? What steps are involved, and how much time does it take, to prepare the necessary disclosures for the corresponding periodic report after the earnings announcement or the completion of the audit (or review)?***

The SECs understanding of the degree of completion of the review or audit is not accurate. While it may be true that much of the audit (or review) fieldwork is substantially complete at the time of issuing an earnings press release, there are substantial additional efforts required by the registrant to develop footnote disclosures and to prepare MD&A that are not complete at the date of most earnings releases. Without those additional efforts and analyses by the registrant it is impossible to complete a review or audit.

10. ***Would the reliability and accuracy of the reports suffer as a result of shortened due dates?***

Yes. As described in preceding responses, we believe quality of data reported in 10-Qs/Ks would suffer by shortening these deadlines. That cost far outweighs any benefit we can see.

11. ***As part of our proposal, we also propose to make a conforming change to the date by which all schedules required by Article 12 of Regulation S-X may be filed as an amendment to the annual report. We propose to change this date from 120 calendar days to 90 calendar days for accelerated filers to maintain a 30 day period after the due date of the report to file the amendment. Should we make this conforming change?***

There is theoretically no reason for the Article 12 schedules to be filed at a date different from that of the audited financial statements as, by and large, the analytical data portrayed therein is usually needed to complete a GAAS audit. There may be some exceptions, but in our experience, no important ones.

12. ***We do not propose to make a conforming change to the 120-day period companies have to file their definitive proxy or information statements involving the election of directors to allow the incorporation by reference of the information required by Part III of Form 10-K. We request comment on whether not changing the 120-day proxy and information statement filing deadline would cause difficulties for companies or decrease the benefits of the proposals to investors because of the delay before receipt of the incorporated information. Should this period also be shortened by 30 days?***

We do not believe a change is necessary. If one is to be made at a future date, issues surrounding Rule 14a-8 determinations are likely to be the drivers of such change.

13. ***We also are strongly considering making conforming revisions to accelerate the timeliness requirements in Regulation S-X (for example, Rules 3-01, 3-05 and 3-12 of Regulation S-X) for the inclusion of financial statements by accelerated filers in other Commission filings, such as Securities Act registration statements, registration statements under Section 12 of the Exchange Act and proxy and information statements under Section 14 of the Exchange Act. We preliminarily believe there would be no countervailing reasons why we should not make these conforming changes, and note that if we do not make these changes, there would be inconsistencies between these requirements and the periodic report filing requirements. Should we make these conforming revisions? Should we also make similar revisions to the financial statement filing requirements in Item 7 of Form 8-K (i.e., reducing the filing deadlines by one-third from 60 to 40 days)? What ramifications might there be if we make these conforming changes, or if we do not make these changes? Should there be other exceptions or changes made for certain categories of issuers or types of filings? Should changes only be made for accelerated filers that would meet the conditions in Rule 3-01(c) of Regulation S-X? Should we provide a transition period for any such changes?***

Because we believe the existing due dates should be left unchanged, we also believe the notion of conforming changes is unnecessary. Much of the data that would be covered by the proposed rule change is data obtained from third parties not “controlled” by the registrant. There are numerous registrant cases in our practice where data availability has been adversely impacted by an uncooperative third party, leaving the registrant at the mercy of that party.

<u>Questions regarding the proposed definition of accelerated filer</u>

14. Would the proposed public float and reporting history requirements exclude the companies that are the least able to comply with shortened deadlines?

The float criteria should <u>not</u> be used to differentiate registrants' informational flows and "current reporting" obligations. Arguably, registrants with lower market capitalization levels are not followed as closely by analysts as are registrants with higher market capitalization. However, current developments are just as likely to be of material interest to investors in those registrants, because a change in the development of the business or in a KPI, is just as likely to have a material impact on reported results as it might have on a larger registrant. Further, smaller registrants are less likely than larger registrants to have developed regimes of regular market communication, with the result that, when reported, such disclosures are more apt to surprise investors and analysts.

15. Would different filing deadlines for different companies confuse companies and/or investors?

We strongly believe the use of a stated number of days after press release or the existing deadline, whichever is the earlier, levels the playing field and allows the market to lead registrants to their own "best practices" level of quality, balanced with timeliness.

16. Should all reporting companies be subject to shortened filing deadlines? Is the exclusion of small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers might incur from shortened deadlines? Should all reporting companies be subject to the shortened filing deadlines, except for companies eligible to file under our small business reporting system? Are there additional or alternate factors we should consider?

All registrants should be subject to the same reporting deadlines. We see no rational way to differentiate investor needs based on company size. Once a registrant gains access to the capital markets, their capital raising potential becomes theoretically unlimited. Accordingly, all companies should be subject to the same requirements, unless a public policy issue overrides that principle, such as a desire to stimulate the use of US capital markets by non-US companies, or the desire to ease burdens on small businesses despite the similarity of risks they pose in the marketplace.

17. Should non-accelerated filers be subject to deadlines shorter than the current deadlines, but not as short as those proposed for accelerated filers (e.g., 75 days for annual reports and 40 days for quarterly reports)?

See response to #16 above.

18. Would our proposed changes affect some companies or industries more than others (such as those with complex transactions or accounting or those that regularly access the debt markets instead of equity markets, and therefore may not have a public float)? Should we make exceptions to the proposed due dates for certain companies or industries? If so, which ones and why?

Although many financial institutions provide very early press releases, they nevertheless have very complex transactions and may need extra time to prepare their quite extensive periodic reports. This would be an example of a group of companies that may seek to delay an earnings press release to fit in with our proposed way of setting the reporting deadlines. (i.e., press release date, plus X days)

19. Currently, foreign private issuers must file their annual reports on Form 20-F within six months after the end of their fiscal years. We are not proposing today to change that interval, although we are continuing to consider this issue and Exchange Act filing requirements generally for foreign issuers. If today's proposal is adopted, the discrepancy between the filing deadlines for larger seasoned U.S. issuers and those for foreign private issuers will increase. The speed with which foreign issuers can capture and analyze information has also probably improved since the six-month interval was established. Foreign issuers are subject to similar obligations as to the information to be reported. There are some categories of information, for example executive compensation, where requirements for foreign issuers are less onerous. Foreign issuers that do not prepare their financial statements in accordance with U.S. GAAP, however, must go through the additional step of a preparing a reconciliation of their financial statements to U.S. GAAP. In light of the requirements of Form 20-F and the situation of foreign private issuers, should the deadline for annual reports on Form 20-F be shortened? If so, should it be shortened to five months or four months after the end of the company's fiscal year? To some other period? What would be the impact of such a change?

We believe that the issues surrounding foreign private issuer reporting are so unique that the Commission would need to analyze those issues and prepare a separate rulemaking proposal on that topic.

We agree that, if the deadline by which annual reports for domestic registrants must be filed were reduced to 60 days after year-end, it would be appropriate for the Commission to re-evaluate the date that annual reports by foreign private issuers should be due. However, given the implications of such a change to a large number of the largest companies in the world, we believe that any such change should only be made after the Commission has carefully evaluated the implications and has proposed changes to the rules and forms that specifically apply to foreign private issuers. Many foreign private issuers would not be aware of the implications of this release, since it is directed to domestic companies. Accordingly, we do not believe it is appropriate to make any changes at this time based on this proposing release.

In evaluating whether the Commission should propose (separately) changes for foreign private issuers, we believe the Commission should solicit input on the following:

- How long after year-end do foreign private issuers publicly announce their results - i.e., press release?
- How long after year-end is the audit report dated for foreign private issuers?
- When do foreign private issuers generally publish local GAAP financial statements for shareholders?
- What percentage of foreign private issuers include US GAAP information in their published annual report to shareholders?
- How much additional time is necessary to prepare the US GAAP information and disclosures?

The Commission may wish to consider voluntarily soliciting this information through the AICPA International Practices Task Force of the SEC Regulations Committee before the issuance of a proposing release.

20. Should the public float requirement be higher or lower than that currently proposed? If higher, how would that level be consistent with the level currently required for short-form registration on Form S-3 (or should that level also be raised)? If a different level is appropriate, what levels should be considered, and why?

Public float should not be used to differentiate information flow to investors. It is valid in setting the delivery mechanisms for data already filed, but should not be a gating factor as to what information may be known by a prospective investor in a larger company vs. a smaller one.

21. Is the method for determining the measurement date for the public float test clear? Is the delineation of which reports would be subject to accelerated deadlines appropriate? Should the determination of which reports would be subject to accelerated deadlines be made at a point other than a date no more than 60 and no less than 30 days before the last date of the issuer's fiscal year?

The methodology for the test is clear. Our view is that it should not be used, however. Measurements that drive reporting deadlines should be known by the reporting company well before year-end to permit time to plan and schedule the work necessary to fulfill all their responsibilities.

22. While we have proposed to use the public float test, we are seriously considering alternative thresholds and request comment on such alternatives. For example, should all reporting companies be subject to shortened filing deadlines, except for companies below a certain revenue or asset threshold (for example, $5 million)? Should we accelerate the filing dates only for companies whose equity securities are listed or actively traded on an exchange or Nasdaq? How would we define "actively traded?" Are there other alternatives that will balance the need for timely, high quality disclosure with the ability of companies to prepare the disclosure without undue burden?

We do not believe there are any meaningful criteria that should be used to distinguish the informational needs of investors. All companies should be subject to the same thresholds.

23. Should the reporting history requirement be shorter or longer than proposed? Is a history of preparing reports relevant to the ability of a company to report on an accelerated timeframe? Is less or more experience needed than that proposed?

See response to #22 above.

24. We are proposing the requirement that a company file at least one annual report to provide reasonable opportunity for a company to gain enough filing experience before it is subject to shortened deadlines. Is such experience relevant to prepare information in a shorter timeframe?

See response to #22 above.

25. Is the proposed method for entering and exiting accelerated filing status that relies on the small business issuer reporting system clear? Is it appropriate?

In the alternative, should there be some other mechanism for companies to enter and exit accelerated filer status? For example, should a company be permitted to exit accelerated filer status if its public float has fallen below some specified threshold (i.e., $25 million or $50 million) and has remained below that threshold for some specified period of time? Should a threshold other than public float be considered? What factors should be considered in formulating such an alternative?

See response to #22 above.

26. Should we require a company to provide notice that it is entering or exiting accelerated filer status? Should such a notice be through a filing on Form 8-K and/or through some other method or combination of methods to ensure broad dissemination of this announcement? Would the lack of an affirmative requirement to announce a change in a company's filing status disadvantage investors or the markets?

See response to #22 above.

Questions regarding the impact of accelerating filing deadlines

27. Are there ways we can minimize these negative effects aside from continuing to permit companies to rely on Exchange Act Rule 12b-25 for extensions of the annual report and quarterly report deadlines?

We can think of none other than deferring the proposal for an extended period. (This may be particularly relevant in the current environment, in which we expect thousands of auditor changes to take place in the near term.) We believe the reason for the existence of Rule 12b-25 in the first instance is that the SEC has, in effect, been saying that, when in doubt, registrants should take the extra time and get it right. It also says the SEC will not revoke a registrant's status or privileges when they admit that extra effort and thought is needed to provide higher quality information.

That principle is valid today and the SEC should not promulgate new rules that cause registrants, auditors and audit committees to rush headlong through complex reporting problems in pursuit of a shortened deadline.

28. Would the current filing extension periods remain sufficient under accelerated deadlines? Should these periods be shortened (for example, to 10

days for an annual report or three days for a quarterly report) to conform to the accelerated filing due dates of these reports and to ensure timely filings? Would shorter periods provide companies with enough time to make Exchange Act Rule 12b-25 useful? Instead, should these periods be lengthened (for example, to 20 days for an annual report or 10 days for a quarterly report) to provide companies more time to file their reports because of the effect of accelerated filing due dates? What factors should we consider in determining whether and by how much these periods should be changed?

Although we do not support the proposed acceleration of periodic filings, if enacted we do not believe the current filing extension periods would remain sufficient, rather they should be lengthened to ensure companies have adequate time to complete the analysis necessary to prepare a quality filing without losing their rights and privileges as a timely filing registrant.

29. Would companies not subject to the accelerated deadlines find it more difficult to retain the necessary outside advisors to prepare their reports in the appropriate timeframe? Would the quality of their reports suffer?

If an entity were not subject to the accelerated deadlines it would not be more difficult to retain necessary outside advisors, in fact it may be easier.

30. Would companies that currently integrate their annual or quarterly reports to security holders with their Form 10-K or Form 10-Q reports, or publish and mail both in a single document, encounter difficulty in meeting the accelerated due dates?

We believe a significant number of registrants will have difficulty complying with the proposed rule whether or not they integrate their filings.

31. Are there special circumstances associated with the preparation of transition reports that weigh against reducing the filing periods for those reports?

We do not agree with the acceleration of the filing of any periodic report. However, we do not believe there are special circumstances associated with the preparation of a transition report that will make it any more problematic for such a filer to comply.

Questions regarding our website access proposal

32. Would our proposal aid in encouraging companies to make information available in a variety of locations and hence make corporate information more widely accessible and disseminated? Would investors find this information useful? Would the proposed disclosure requirement provide sufficient notice to investors of the available sources of corporate information?

The National Investor Relations Institute's ("NIRI") Survey results indicate that only 13% of respondents do not post their 10-K's to their websites either directly or through a link to another site. As such, we do not believe that this proposal, in and of itself, will encourage companies to make information available in a variety of locations, as many companies are already making the information available on their website.

Since the information posted to the company's website would be the same information posted on EDGAR we believe investors would not necessarily find this information any more useful than that posted on EDGAR. Access to other company data would be easier, but whether it is better or not depends on the "quality" of what is on the site.

Further, approximately 51% of the companies surveyed by the NIRI currently provide a link from their website to their filing on EDGAR. The proposed release states that such hyper linking would not allow a company to state that it provides website access to its reports as soon as reasonably practicable, and in any event on the same day as filed, as the Commission's EDGAR website is posted on a 24-hour delay. Unless the SEC would consider information posted on a company's website as "filed" for Commission purposes, we see a discrepancy between the requirement to post to a website immediately upon filing but then to not consider a link to EDGAR, which is what the Commission currently considers "filed", to be sufficient.

We also believe that a 1-2 day delay should be allowed for document availability on a registrant's website, consistent with the delay built into the SEC's own website. There are data formatting and communications issues to be dealt with. In this regard we note that, despite advances in technology, many EDGAR filers continue to utilize outside services to assist them to cope with these issues. Dealing with an outside website service provider would give rise to similar challenges, we believe.

Although we do not object to a company listing its website address in its filings we are not sure that this proposed disclosure requirement would significantly increase an investors understanding of the available sources of corporate information as there are numerous methods of researching a company, including but not limited to, periodicals, various other internet sites, analysts calls, industry conferences, etc.

33. The proposed new disclosure requirement only would apply to companies subject to the accelerated filing deadlines. Is excluding small issuers appropriate? Is the need for timely information about these issuers greater than the additional burden or expense these issuers would incur due to the proposed new requirement? Should all reporting companies be subject to the proposed new requirement?

We do not believe excluding small issuers is theoretically appropriate. Informational needs do not depend on company size and the disclosure requirements are not excessive.

34. The proposal would only apply to companies that file on Form 10-K. Should we also include foreign private issuers that file on Form 20-F? Would expanding this requirement be overly burdensome?

We do not believe this proposal should include foreign private issuers. That issue requires separate consideration and should be the subject of separate rule proposal if the Commission decides to move forward. See our response to #19 above.

35. What are the expected additional costs of posting Exchange Act reports on company websites, either directly or by hyperlinking to a third-party service? Please specify the types of costs that would be incurred and quantify them, if possible.

For those companies that already incur the expense to maintain a website, we believe additional costs would be minimal.

36. Would the proposed new disclosure be overly burdensome? Should additional disclosure be required? Is some of the proposed disclosure not necessary or appropriate?

We do not believe that the proposed new disclosure regarding: a) the fact that an investor can read and copy information from the SEC's Public Reference Room and website, b) the company's website address, c) whether the website includes the company's filings, and if not, why not, d) the locations where the public can access these filings immediately upon filings and e) whether the company voluntarily will provide electronic or paper copies of its filings free of charge to be overly burdensome. However, we do not believe any additional disclosures are required or that the SEC should effectively be requiring the creation and maintenance of a website. If the Commission agrees that providing a hyperlink to the EDGAR website would suffice to meet the new website access proposal than the disclosure requirements of the locations where the public can access these filings immediately upon filing would be duplicative of the required disclosure regarding the Commission's website

37. Is additional guidance necessary in how to comply with the proposal? If so, in what areas would guidance be helpful?

We do not feel any additional guidance is necessary to comply with the proposal.

38. Should the disclosure appear in other company filings, such as quarterly reports? We encourage companies also to put this disclosure in their annual report to shareholders.

If the premise is that by providing an internet address, the investor is better informed by being able to access corporate information in an efficient and cost-effective manner than, if adopted, we believe the disclosure should also be include in 10-Q's and transitional reports.

39. Our proposal would require disclosure of a company's Internet address. Is this requirement helpful to investors? What are the ramifications of requiring disclosure of a company's website address? Are there reasons why a company would not want to provide disclosure of its website address?

The disclosure of an internet address would be helpful to investors, however, it would need to be clear that other information provided on such a website is not considered filed with the Commission nor has the company's independent auditor reviewed or audited such information.

40. We have not proposed a conforming change to require disclosure of a company's website address in Securities Act registration statements. Currently, companies are only encouraged to provide their website address in these documents. We request comment on whether we should make this conforming change. Would there be any negative impacts from this change?

If the premise is that by providing an internet address, the investor is better informed by being able to access corporate information in an efficient and cost-effective manner then we concur that a conforming change should be made to require such disclosure in 1933 Act filings as well after taking into account the issues summarized in 39 above.

41. ***Should a company be required to disclose whether it provides access to all of its Exchange Act filings (and not just its periodic and current reports)? Should access to exhibits or supplemental schedules be excluded? Should Securities Act filings be included? Should information under the proxy rules be included, or at least the information required by Part III of Form 10-K incorporated by reference from a company's definitive proxy or information statement?***

We believe it is reasonable to require disclosure of whether access to all Exchange Act filings is provided. We see no reason for a company to limit its disclosure or its answers regarding access on its own website to data already available to the public on the SEC's website. On the other hand, since the SEC does not currently recognize registrant website postings as the equivalent of EDGAR filings, we also see no basis for the SEC to specify what must be on a registrant's website.

42. ***We recognize that not all investors may have ready access to the Internet. Are there additional ways to facilitate access to Commission information for those without Internet access?***

We believe that for those that do not have personal internet access, and cannot obtain such access through public libraries, schools, places of employment, internet cafes or other methods, the current model which allows them access through Public Reference Rooms is adequate.

PRICEWATERHOUSECOOPERS

PricewaterhouseCoopers LLP Exhibit
Survey Results

1. ***Would your client be able to comply with the release without any significant additional effort or expense?***

Yes	32.69%
No	67.31%

2. ***If the client believes they will be able to comply but it will require significant additional effort what is the reason for the additional effort? (check all that apply)***

16.67%	Registrant's reporting systems do not facilitate collection of data within time frame
10.42%	Significant equity investees or joint ventures for which data needs to be collected
37.50%	Foreign operations for which data needs to be collected
58.33%	Lack of personnel/resources to complete the filing and all the related disclosures within the new time frame
37.50%	Significant number of complex transactions that require analysis

18.75%	Adoption or completion of analysis for SAB 74 disclosures for new accounting standards
60.42%	Although basic Profit and Loss data is available substantial added effort and time is needed for Balance Sheet data, analysis, disclosures and MD&A
37.50%	Audit committee or board of directors would not have sufficient time to perform their review function

3. ***Would it be easier for the client to comply with the acceleration of either the annual report or the quarterly report?***

Yes 57.69%

If yes, which one
Quarterly 40.00%
Annual 60.00%

PRICEWATERHOUSECOOPERS

July 19, 2002

Mr. Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

Re: File No. S7-16-02

Dear Mr. Katz:

We at PricewaterhouseCoopers LLP appreciate the opportunity to comment on the Commission's Proposed Rule: *Disclosure in Management's Discussion and Analysis About the Application of Critical Accounting Policies* (the "proposal(s)" or the "proposed rule(s)").

Overall Comments

We support the Commission's overarching goals to enhance the transparency surrounding critical accounting policies and estimates and shed light on those policies involving the application of significant judgments on the part of management. However, we are concerned that the proposed rules will result in MD&A disclosures that may become less understandable and valuable, especially to the average investor.

In addition, we believe that the potential impact of this proposal on preparers and readers needs to be evaluated based upon its potential compounded effect. Our concern is that, when taken together with the impacts of other pending rule proposals, especially the proposal to accelerate filing deadlines, this far-reaching expansion of MD&A could become a detractor from the comprehensibility of financial reports. We believe this might happen because, in coping with the need to close the books and report faster, registrants may well become focused on the goal of containing their liability by including large volumes of raw uninterpreted data, and will not spend the time required to condense, analyze and summarize the data to make it more understandable.

We do, however, support Commission efforts to more scrupulously enforce existing S-K 303/MD&A and related FRP requirements surrounding such disclosures. A revised MD&A interpretive release and one or more surgically placed SABs or FRPs could achieve the desired effects without sacrificing the understandability of financial reports.

For example, an expanded interpretation of the existing S-K 303 disclosures surrounding known events, trends and uncertainties to encompass accounting estimates having a calculable effect, perhaps measured under Rule 1-02 of Regulation S-X, would express forcibly the Commission's focus on judgmental items, but retain the emphasis of the disclosure on the entire business and its results, using commonly understood materiality measures. Correlating the MD&A disclosure to SoP 94-6 would leave little doubt in preparers minds what the disclosure threshold would be and would likely place the disclosures in the financial statements, where they belong and where they would be subjected to auditing procedures under GAAS.

We suggest that the Commission and the profession jointly address the “drivers” of a registrant’s business through improved disclosures in the financial statements and through MD&A, as well as promote the development of key performance indicators. We believe it would be a wiser use of all our efforts to attempt to elicit that information which is useful to understand “the business” rather than to be involved in voluminous disclosures of variations in individual line-item estimates.

Information Overload

By the Commission’s own examples, it seems clear to us that the proposal would add, on average, five pages to an existing MD&A. Containing that expansion to just five pages assumes that only five critical estimates are identified and that initial accounting policy adoption disclosures are minimal.

Based upon the way the proposal is drafted, and the current reporting environment in which scrutiny of management is at an all-time high, there is a built-in incentive for preparers to be expansive, not concise, in their explanations. They will justifiably believe that they need to attempt to support the reasonableness of their judgments surrounding critical estimates in print. They will also fear, as we do, that this release, applied retrospectively could result in questioning of many of their past judgments. Their likely reaction to the risk of being challenged will be to increase the volume of detailed information presented in the belief that it will appear more credible based on its volume.

As we indicated in our response to the rule proposal regarding deadline acceleration, we believe that the market wants, and investors are in the long-run better served by, the continuous and consistent delivery of credible, high-quality information on which to base investment decisions. A proposal that could result in the production of increasing volumes of boiler-plated financial disclosures, designed to contain issuer liability rather than to inform, does not meet the Commission’s or our stated goals of achieving transparency concurrently with understandability.

Implementation

As drafted, the proposed rules leave many unanswered questions as to definitions and create new terminology, which may not be generally understood by preparers. Certain key questions, such as how to practically limit the number of critical estimates to be commented upon to a stated number, are taken as stipulations in the proposal. The application to segment disclosures is also left unclear.

We note that the data being sought is quite similar to that required in the “1934 Act Guides, especially Industry Guides 3 and 6. Often the Guide data is displayed in tabular format without much in the way of discussion. However, such data does focus on the effects of certain key factors, such as interest rate sensitivity, on the registrant as a whole, rather than on effects of such changes on individual line items or estimates. We believe that it would better serve readers and investors were the SEC to enhance and enforce the Guides. The SEC should enforce a requirement for discussion of the critical factors that could impact the registrant's overall financial results, rather than dissecting estimates and assumptions related to individual accounts.

Accordingly, we believe the rule should be revised and re-exposed for comment containing understandable criteria for inclusion of disclosures.

If the SEC believes that principles-based standards are worth pursuing in accounting standard-setting in general, the focus on particular estimates rather than the registrant as a whole in this rule proposal, does not seem to reflect a similar belief as to non-financial statement disclosures.

Auditor Involvement

We note that the current auditing standard that deals with reviews and examinations of the entirety of MD&A (AT 701) would need to be amended to allow for some modified form of reporting on only a portion of MD&A. We do not support the concept of examining only a portion of MD&A.

Overall, auditors are in a position to perform MD&A examination services and they are potentially valuable services. However, we believe the focus of the Commission's efforts should be to enhance investor understanding of critical items affecting the "business". Reporting on just the accounting estimates is not consistent with MD&A's overall goals.

We could support auditor involvement under the proposed rules, but only if the examination or review services were applied to the entirety of MD&A as contemplated by AT 701, and only if an adequate separation of auditor responsibility could be made between historical data that could be examined on a traditional basis and that which is effectively projection data (i.e., based on stipulated assumptions about future events) which is being introduced into MD&A as a result of the proposed rules. In addition, a specific auditor safe-harbor should cover any involvement or association with prospective financial data.

We and several other firms have followed up on the examples forming the basis for Footnote 104 of the rule proposal and have found the portrayal of the extent of such reviews to be overstated. We have communicated our findings through the AICPA's SEC Regulations Committee, under separate cover, to the Office of the Chief Accountant.

Potential Undermining of Other Initiatives

We believe:

- The rule proposal appears to be in conflict with the principles of FR-59, ASR No. 142 (FRP 202.01-.04) and the Staff Training Manual (Topic Eight), in that it calls for disclosure of a range of alternate outcomes under different assumptions resulting from the application of critical estimates. The publication of such alternate measures of outcomes seems to us to potentially undermine the SEC's initiatives to limit alternate measures of performance and will create a menu of potential adjustments and encourage the calculation not of an alternate net income amount, but potentially dozens. Current SEC rulemaking should not be encouraging the development of even more varied and variable forms of *de facto* pro forma earnings data.
- The proposal undermines the justification concept contained in APB Opinion No. 20, in that it requires expanded discussion of alternate accounting principles after the justification and preferability concepts of that standard have been applied by registrants and their auditors, presumably in good faith.
- The proposal also undermines the concept of APB Opinion No. 22, in that, when considered cumulatively with FR-60 and FR-61, it creates a multi-tiered structure of relative importance of accounting policies, leaving the reader with the impression that the basic financial statements may be deficient in an overall sense because, as to accounting policies, unless supplemented by MD&A disclosures, the financial statement footnotes are incomplete. If the proposal is finalized as written, financial reports would now have accounting policies that are "significant" under APB 22, "critical" under FR-60/61 and some subset of those that involve either "critical accounting estimates" or the selection of new accounting principles (involving disclosure beyond that already required by APB 20 as to justification and effects) under the current proposal (33-8098).

Other Risks & Industry Issues

In addition to the creation of additional measures of performance, the proposal calls for a three-year retrospective commentary on the reasons for and effects of any material changes in critical estimates. We believe that driving the disclosure requirement down to the line item level, without linking the requirement for disclosure to the overall results of the business, using net income or other appropriate indicators of operating results to dictate when disclosures are necessary is not appropriate, because it will materially increase the volume of disclosure without any guarantee of getting to the matters that are the "drivers" of the business.

In addition, the need to describe changes that had an impact on "financial performance" creates an uncertain measurement yardstick as well as makes registrants and their auditors potential litigation targets. Virtually any incremental disclosures of estimate changes made by a company whose share price has fallen in the past three years, will entice the plaintiffs' bar into commencing legal actions.

The sensitivity analysis and estimate change requirements pose two types of risks that we are concerned about:

1. The first relates to the generation of the range of outcomes. We believe that the process to select the ranges may be subject to abuse because preparers will want to be seen as having applied judgments that are "middle of the road" positions. One way to promote that notion is to describe the ends of the range as neatly bracketing the estimate currently in use, potentially making the objective of adding to investor understanding a zero-sum game.

2. Utilizing reasonably possible near term changes as the basis for the sensitivity analysis introduces "projection" data and multiple assumption interplay into the MD&A. The SEC has always demanded a higher standard when PFI is included in documents, requiring that the "forecast" standard be met, and registrants determine a single most likely outcome relative to the predicted event.

Before the Commission requires new disclosures without regard as to whether they were "material" under the standards in place at the time such estimates were made or changed, it should further justify the need for such disclosures by studying whether this type of disclosure could have possibly afforded investors protection from the types of reporting debacles we have all recently witnessed.

With respect to expanded discussions of certain types of estimated liabilities, such as for taxes and litigation settlements, we believe the public disclosure of the details of the estimation process and ends of the range of estimates may seriously damage a registrant's negotiating position. The Commission recently, and wisely, deferred further consideration of a rule proposal (33-7793) related to supplementary information about liabilities and reserves reported pursuant to Rule 12-09 of Regulation S-X because of the damaging effects such disclosures may have on registrants and their shareholders.

For the same reasons, we believe the current proposal should exclude such accounts from discussion. Although difficult to define the necessary exclusionary language, it is also apparent to us from our consideration of the proposal, that in some industries the estimation methodologies and key assumptions used are themselves in the nature of a trade secret which creates competitive advantage in the marketplace (e.g., a unique actuarial estimation approach or inputs that allows an insurer to price a product more aggressively than a competitor).

We also note that in the insurance industry, there will be very significant time and costs incurred in order to generate the data necessary to comply with the sensitivity analysis requirement. It is hard to imagine these extra efforts being completed in time to be included in a Form 10-K whose deadline has been "accelerated" to 60 days from year-end. The notion of "compounding effects" of the Commission's other concurrent rulemaking proposals is a reality to the insurance and other industries.

- To illustrate how the proposal might conflict with existing GAAP for insurance accounting, FAS 60 requires significant estimates to be made at the inception of a long duration contract in the recording of policyholder benefit reserves. These assumptions include mortality, maintenance, interest and withdrawal expectations. These assumptions, however, are locked in after inception and not changed unless a premium deficiency is expected. Therefore, while these significant assumptions are already disclosed, sensitivity analysis seems hard to justify when GAAP does not allow them to change and the related registrant insurance information systems are not built to calculate the effect of changing.

Foreign Private Issuers

Beginning with our response to question #63 in the attachment to this letter, we have addressed a series of matters pertaining to foreign private issuers. Please refer to that section for our comments and recommendations.

* * * * *

In the attachment to this letter, we have expressed our views on the specific questions that appear in the Release. Our responses should be considered in conjunction with the general comments expressed above.

We appreciate the opportunity to express our views and would be pleased to discuss our comments or answer any questions that the staff may have. Please do not hesitate to contact Jay Hartig (973-236-7248) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

1. Should we require additional MD&A disclosure specifically regarding the effects of a change by a company from one accounting policy to another acceptable (and preferable) accounting policy under GAAP?

   No. The current requirements of APB Opinion No. 20 are sufficient in our view, provided they are followed diligently and monitored through the SEC comment process.

2. Should we require in MD&A a discussion of the impact that alternative accounting policies acceptable under GAAP would have had on a company's financial statements even when a company did not choose to apply the alternatives?

   No. To do so would only create a menu of possible adjustments and result in the creation of multiple alternate measures of performance. The SEC should not create rules that result in what are *de facto* pro forma earnings disclosures.

3. What costs would companies incur if they had to prepare disclosure about the effects of alternative accounting policies that could have been chosen but were not?

   The question is not one of the cost of preparation, but the cost in terms of lost investor understanding of reports that are becoming ever more incomprehensible.

4. Beyond a company's initial adoption of those policies, should we require disclosure in MD&A regarding a company's reasons for choosing, and the effects of applying, accounting policies used for unusual or innovative transactions or in emerging areas? Similarly, should we require companies to disclose in MD&A the effects of accounting policies that a company could have adopted, but did not adopt, for unusual or innovative transactions or in emerging areas?

   We believe that creating such alternative disclosures and discussions undermines the concepts of APB 20 and invites the creation of corresponding alternate income measures to go along with the array of alternative principles. We believe this would pose more of a risk of abuse than the disclosure is worth.

5. Should we require more disclosure by companies about their process of making estimates, or in other areas of discretion relating to recognition and measurement in financial statements? If so, please describe in detail.

   We would encourage one or more SABs or FRP sections elaborating on the SEC's views of the meaning of APB 22, SoP 94-6 and APB 20, in the context of investor protection, to be used in administering the comment process, rather than imposition of disclosures applied broadly to many companies whose accounting is, in the final analysis, unremarkable.

6. Should we require in MD&A a discussion of the impact of a company's choice among accounting methods under GAAP that are used in the company's industry (for example, the completed contract and the percentage of completion methods of accounting for construction-type contract)? Should we require that type of disclosure only where a company uses a method under GAAP that is not generally used by other companies in the industry?

See response to #5 above.

7. Is the definition [of critical accounting estimates] appropriately tailored?

   No. The definition(s) are unclear. The terms "highly uncertain", the standards for what could "reasonably" have been used and the impact on "financial presentation" (as opposed to a generally understood measure of significance related to the results of the business taken as a whole, similar to Regulation S-X Rule 1-02) all create an air of uncertainty as to how to apply the rule. In addition, they leave the door open to criticism in subsequent accounting periods should estimates vary. Without an adequate definitional framework for "defense", preparers could become subject to unnecessary litigation.

8. Does the definition [of critical accounting estimates] capture the appropriate type and scope of accounting estimates?

   No. See response to #7 above.

9. Is the definition [of critical accounting estimates] appropriately designed to identify the accounting estimates that require management to use significant judgment or that are the most uncertain? If not, what other aspects descriptive of that type of estimate should be included?

   A quantitative test of specific (standard) financial statement measures based on the significance tests of Regulation S-X Rule 1-02 should be designed and exposed in an amended rule proposal.

10. Is the definition appropriately designed to identify the accounting estimates involving a high potential to result in a material impact on the company's financial presentation?

    No. See response to #7 above.

11. Would it be difficult for a company to discern which of its accounting estimates require assumptions about highly uncertain matters? If so, how could the proposal better target them?

    See response to #7 above.

12. Should we consider setting a minimum percentage impact on results of operations in the second criterion of the definition, or would that be unnecessary because the proposed definition would not capture changes that have an insignificant impact?

    We believe that there will be a voluminous response to this criterion. Registrants will likely attempt to protect themselves by including greater volume of descriptive comments, possibly accompanied by ample doses of boilerplate. A minimum quantitative test based on standard financial statement measures might help in this regard.

13. How many accounting estimates would a company typically identify as critical accounting estimates under the proposed definition?

There is no way to discern the answer to this question, except to say that it is artificial to limit the number of critical estimates to be discussed when segment materiality is introduced as a benchmark and when the legal liability risks of the rule appear to be so high.

14. Would a company with multiple segments have a greater number of critical accounting estimates than a company without multiple segments? If so, please provide an explanation.

    The definition of materiality established by the SEC in SAB 99 and through the WR Grace enforcement release have caused registrants, their auditors and the plaintiffs bar to believe that omitted information at the segment level is likely to be actionable. A registrant seeking to protect itself would probably conclude that more than one estimate per segment should be included, just to gain a minimal reduction in litigation/Enforcement risk.

15. Should we establish a maximum number of accounting estimates that may be discussed as critical accounting estimates (e.g., seven)? If so, what should the maximum number be and what criteria should be applied to set the number so as to strike the appropriate balance between information truly useful to investors and overly extensive disclosure of marginal use? If a maximum were set, should the number of segments a company has be considered?

    No. See response to #14 above.

16. Should we expand the definition to include MD&A disclosure of volatile accounting estimates that use complex methodologies but do not involve significant management judgment? Should we do so only when the underlying assumptions or methodologies of those estimates are not commonly used and therefore not understood by investors?

    No. Such information is already called for by GAAP and by FR-61. The proposal already promises to massively increase the volume of MD&A to the point that the SEC itself has had to ask for public comment about the need for an executive summary.

17. Are there some types of critical accounting estimates or some circumstances where the proposed disclosure relating to sensitivity would not be meaningful or otherwise helpful to investors? If so, which estimates or what circumstances?

    There are number of estimates already covered by GAAP standards for which the FASB had ample opportunity to specify the disclosure requirements. To effectively further “amend” the FASB standards through an MD&A release is not appropriate in our estimation.

18. In addition to the two choices we propose for assuming changes relating to the critical accounting estimates to analyze sensitivity, are there others that we should permit? Should we require instead that all companies use the same method? If so, which one?

    The SEC can and should extend the concept of disclosure of a known but uncertain event or trend already included in Regulation S-K Item 303 more directly to accounting policy disclosures called for under APB Opinions No. 20 and 22 and to SoP 94-6. In other words, such disclosure would deal only with describing the potential for prospective changes in (critical) estimates in the footnotes, and would continue to confine elective forward-looking statements to the MD&A section of report.

19. Should we require a company to use whichever of the two proposed choices demonstrates the greatest impact on the company's financial presentation?

    No. Requiring the greatest impact to be disclosed lessens the value of the disclosure and unnecessarily sensationalizes the fact that, to begin with, the item is an estimate, with a whole range of possible outcomes.

20. Are there circumstances under which a company should be required to demonstrate sensitivity using both of the proposed choices?

    No. Sensitivity analysis itself is problematic. Creating more estimates is not the solution and detracts from reader comprehension of data that is important. See also our response to #19 above.

21. Are there any critical accounting estimates for which neither of the two choices for selecting the assumed changes would be appropriate?
    See response to #19 above.

22. Will companies be able to select appropriate changes in their most material assumption or assumptions, or should we provide further guidance?

    Many accounting estimates involve the use of multiple assumptions that interact with one another. If, individually, the assumptions are relatively benign, but the estimate could become volatile if all varied in a particular direction, there would be a natural tendency on the part of preparers to mention all of them in order to limit their SEC and legal exposure. This will contribute (negatively) to the volume of MD&A.

23. To enhance an investors' ability to compare the sensitivity of various companies' financial statements to changes relating to a particular type of accounting estimate, should we standardize the changes that companies must assume for various types of estimates? If so, what should they be and why? For example, should we set a specified percentage increase and decrease to assume (e.g., a 10% increase and decrease), or a presumptive increase and decrease, provided that degree of change is reasonably possible in the near term?

    The purpose of MD&A has been, and should continue to be, to enable investors to see the company through the eyes of management. Application of standardized sensitivity criteria is antithetical to that principle.

24. Conversely, would any changes we standardize not be equally meaningful to measure sensitivity, or equally probable, for various accounting estimates, industries and companies, and thus reduce the value of any disclosure about sensitivity?

    See response to #23 above.

25. Is sufficient disclosure of these changes already required under current MD&A requirements?

We believe that, to the extent the SEC believes current day disclosures have not met the spirit of the rules, the combination of the CorpFin comment process and relatively minor amendments to the MD&A rules effected through SABs or FRPs can materially improve it.

26. Is a three-year period the most appropriate period of time over which investors should consider changes? If not, why would a shorter or longer period be more appropriate?

    For the reasons noted in our letter a "look-back" should not be required at all.

27. Would requiring disclosure over a longer period, such as five years, make it easier for investors to identify trends? If so, over how many years should we phase in a longer period requirement?

    See response to #26 above and the text of our letter.

28. Should we mandate a standardized format for quantitative disclosure about past changes in critical accounting estimates (e.g., a chart illustrating the dollar value of the change from the prior year for each year showing the impacted line items and other effects in each year)?

    No. See response to #23 above.

29. To what extent does senior management currently discuss critical accounting estimates with the audit committee of the board of directors and the company's auditors?

    There is no uniform depth of discussion in our experience. Audit Committees' levels of interest in, and managements' interest in increasing the Committee's involvement in, "accounting details" ranges from highly proactive to moderate. However, current events and governance change proposals put forth by the NYSE and others have increased registrant and director awareness of the need to improve such communications and to increase their granularity.

    In this regard, the major accounting firms are also currently very active in helping improve audit committee communications and heightening Director awareness of the impacts of technical accounting matters on the company as a part of fulfilling their SAS 61 responsibilities.

30. Would the proposed requirement {to disclose the extent of discussions with the audit committee as described in S-K 303©(3)(iv)} provide useful information to investors?

    Such a requirement if implemented at all should be installed with a built-in "sunset review" provision. If the evolutionary changes and other "incentives" currently under discussion at the SEC and in Congress prove effective, the relative importance of this disclosure should decrease rapidly.

31. Would the proposed disclosure be a catalyst for discussion between audit committees and senior management? Could it chill discussions?

    This will depend in large part on the nature of the advice rendered by the legal profession to their SEC registrant clients. To the extent that the release leaves questions about the extent of required disclosure on the issues or of the discussions, legal advice could become conservative to the point of chilling the dialogue. We believe that possibility could be reduced or avoided by bringing greater clarity to the definitions included in the proposals.

32. Is there other related disclosure that should be required for the benefit of investors?

    No, not at present. The task at hand is to achieve quality of reported data and improved understandability, not to increase MD&A's volume gratuitously.

33. Should we require that companies disclose any unresolved concerns of the audit committee about the critical accounting estimates or the related MD&A disclosure?

    By the time any public disclosure is made, there should be no unresolved concerns or the disclosure should be held back until the parties achieve a meeting of the minds.

34. Should we require disclosure of any specific procedures employed by the audit committee to ensure that the company's response to the proposed disclosure requirements is complete and fair?

    No. Specific disclosures should not be required. If made, in our view, they would be highly susceptible to hyperbole in describing their effectiveness.

35. Should we consider requiring disclosure of whether the audit committee recommends the disclosure be included in the MD&A, which is akin to the disclosure required in the Item 306 audit committee report?

    No. The "release" of the financial statements, taken as a whole, for use in the Annual Report under S-K 306(a)(4) is qualitatively far different, and more significant, than the inclusion of the detailed accounting information contemplated by the proposed rule.

36. Instead of the proposed disclosure, should we amend Item 306 of Regulation S-K and Regulation S-B to require that the audit committee report disclose whether the audit committee has reviewed and discussed with senior management the development, selection and disclosure regarding critical accounting estimates?

    That change alone, without all the detailed disclosures proposed, would be sufficient and indeed preferable in our view.

37. If we were to amend Items 306 in this manner, should we also expand them to include the discussions about critical accounting estimates between senior management and the audit committee as one of the bases for the audit committee's recommendation to include the financial statements in the annual report?

    No one factor should be singled out as supporting the inclusion of the financial statements in the Annual Report. The judgments involved are much broader than evaluating just one aspect of MD&A disclosure.

38. Should we expand Items 306 to require disclosure of whether, based on an audit committee's review of and discussions about the MD&A, the audit committee recommended to the board of directors that the MD&A be included in the company's annual report?

While this disclosure sounds on its face to be reasonable, many legal advisors adhere to a strict, literal legal separation of the Audit Committee from management, a distinction this segment of the proposed rule seeks to blur. Those advisors will in all likelihood be offended by the proposal and would assert that the audit committee members can never be in a position to know as much as management about the disclosures in financial statements or MD&A to support such a recommendation.

39. Should we expand Items 306 to require disclosure of whether the audit committee has reviewed and discussed the entire MD&A disclosure (current and proposed) with management and/or the auditors?

    It is not unreasonable for the Audit Committee to confirm that the auditor has fulfilled his or her SAS 8 responsibility, but in our view that one step does not rise to the level of essential public disclosure that in any way significantly enhances investor protection.

40. If any of a company's accounting policies diverge, to its knowledge, from the policies predominately applied by other companies in the same industry, should we require that the company disclose, possibly in connection with the audit committee report, whether the audit committee has had discussions with senior management about the appropriateness of the accounting policies being used? When such discussions have taken place, should we require that the company disclose the audit committee's unresolved concerns about the divergent accounting policies being applied? Prior to the adoption of our proposals, to what extent would a company know that its accounting policies diverge from those of other companies in its industry?

    A one-time reaffirmation may be useful, but the point should be that there are to be no "unresolved concerns" prior to publication, in which case description of the preceding events is unnecessary.

41. Should we provide more guidance for determining the circumstances that warrant segment disclosure?

    Yes, especially in light of the explicit statements regarding segment-based materiality measures contained in SAB 99 and included in recent Enforcement cases.

42. Should we require the additional segment discussion only when more than one segment is affected?

    This would be difficult to justify. At present companies are not required to prepare MD&A based on segments. It would not be appropriate to discuss estimates (by segment) on a basis different than the entirety of the company.

43. Should we require that the critical accounting estimates disclosure in the MD&A undergo an auditor examination comparable to that enumerated in AT §701?

    We believe auditor involvement in MD&A can be a valuable service. However, we also note that there currently exists no professional standard that permits reporting on only a portion of MD&A. Footnote 104 of the proposed rule citing over fifty examples of public MD&A

reports is not accurate. Of the eleven examples of alleged AT 701 reporting by our firm the actual number was zero public reports and one non-public report issued to the Board only. (The other citations of the two instances of reporting, one in an IPO and one pursuant to a Registrant's Enforcement settlement are accurate.)

44. Would these engagements significantly improve the disclosure provided in MD&A?

    We are unsure of the extent to which quality would improve, but recognize that the presence of an outside reviewer may be useful in stimulating compliance with existing MD&A rules. These additional attestation services would materially increase the overall cost of audit.

45. In practice, when companies engage auditors to examine the MD&A pursuant to AT §701, does it elicit a higher quality of disclosure than when auditors consider only, as currently required, whether an MD&A is materially inconsistent with the financial statements?

    Neither the SEC nor we can assess this question, since AT 701 reporting is currently a rarity.

46. If we were to require examinations by auditors of part or all of MD&A disclosures, should we also require that a company file, or disclose the results of, the auditor's reports?

    If the reports are to be required, we believe the benefits of improved compliance could be achieved without public filing.

47. If we do not require auditors' examinations of MD&A disclosure but an auditor nonetheless examines MD&A disclosure on critical accounting estimates, should we require that the auditor's report be filed or the results be disclosed?

    No. See our responses to #43-#46 above.

48. What would be the relative benefits and costs of a requirement for an auditor examination with respect to the critical accounting estimates portion of the MD&A?

    As indicated above, based on the rarity of reporting, it appears that the marketplace currently believes the costs outweigh the benefits.

49. Should we require an auditor "review" under standards comparable to AT §701, as opposed to an auditor "examination" of the critical accounting estimates MD&A disclosure?

    No. If services are to be mandated, then they should be more substantive than current review standards and should embrace the entirety of MD&A.

50. Do current requirements relating to what an auditor must consider make an examination or review of the proposed MD&A disclosure under standards comparable to AT §701 unnecessary?

    SAS 8 responsibilities differ from and are far less than AT 701 procedures.

51. If we do not require auditor examination or review, are there other steps we should take to help ensure the quality of disclosure in this proposed section of MD&A?

Other recent and pending rule changes which include certification requirements seem to have provided a number of the necessary "incentives" for management to be more rigorous in their preparation of MD&A.

52. Are there some accounting estimates or material assumptions or methodologies that would normally be considered by companies only on a less frequent basis than quarterly? If so, which ones? Should they be omitted from the quarterly updating requirement on that basis?

    There are many in the areas of employee pensions and other benefits as well as many in the insurance industry, which would be particularly impacted by the proposed rule and which are only subject to updating on an irregular basis. It would be more valuable to readers to understand the ground rules for updating and the management processes followed to consider estimates that are central to operating results than to delve into the details of 3-5 estimates that may or may not be drivers of the registrant's business.

53. Is the scope of the disclosure required in a quarterly update appropriate? If not, what should be added or omitted?

    It appears that the disclosures elicited may already be required by other SEC rules or GAAP.

54. Would the proposed disclosures about initial adoption of accounting policies provide useful information to investors and other readers of financial reports?

    No. They are largely duplicative of GAAP and create the impression that there is a wide array of options to select from, thus undermining the justification concept of APB 20 and generating multiple-outcome scenarios.

55. Are there particular situations involving the initial adoption of a material accounting policy for which we should require additional disclosure? If so, what are those situations and what additional disclosure should we require?

    GAAP provides for most of the required disclosures. If the SEC is unhappy with GAAP compliance, we would support issuance of a SAB and enforcement of APB 20 more stringently through the comment process.

56. Should we require companies to disclose, in MD&A or in the financial statements, the estimated effect of adopting accounting policies that they could have adopted, but did not adopt, upon initial accounting for unusual or novel transactions?

    Unusual or novel transactions are not clearly defined in GAAP or SEC rules. Therefore, we cannot support or imagine how anyone could comply with an SEC rule without a framework, directed at an unspecified target area. We note that in APB 22, there is the available context of that entire standard as well as the framework of GAAS and materiality to guide preparers and auditors. However, the SEC's rule lacks such points of reference and subjects such parties to unknown, but potentially severe, penalties for violation.

57. What would be the costs for companies to prepare disclosure about the effects of alternative accounting policies that could have been chosen but were not?

Multiple calculations can always be performed at some monetary cost. The question should be directed at what companies stand to lose in credibility and investor focus on important matters by such disclosures.

58. Would investors be confused if companies presented disclosure of the effects of acceptable alternative policies that were not chosen?

    Yes.

59. Should we require in MD&A a discussion of whether the accounting policies followed by a company upon initial adoption differ from the accounting policies applied, in similar circumstances, by other companies in its industry, and the reasons for those differences? Please explain. If such a discussion should be required, please identify the specific disclosures companies should make.
    No. See the full text of our comment letter.

60. Would a company know the policies applied in similar circumstances by other companies in its industry? If not, would auditing firms or other financial advisors be able to assist companies in determining whether their accounting policies generally diverge from industry practices?
    No. Professionals are in most cases precluded from divulging one client’s data to another. Surveys of public data might not be sufficiently precise due to variances in business conditions and descriptions.

61. Should the proposed disclosure be presented in a separate section of MD&A or should we require that it be integrated into the other discussions of financial condition, changes in financial condition, results of operations and liquidity and capital resources when the proposed disclosure is closely related to an aspect discussed in those separate sections of MD&A?

    Yes. To allow a reader to avoid what promises to be fairly tedious disclosure a separate section should be created.

62. Should other requirements relating to the language and format be added to the requirement for clear, concise and understandable disclosure? If so, what requirements?

    We believe, for the reasons stated in our letter, that the rule proposal is likely to produce a result diametrically opposite to clarity and conciseness. Installing such language would be ineffective at preventing this result.

63. Should we apply different standards for foreign private issuers with respect to the proposed MD&A disclosure?

    To the extent that there are changes that are adopted, we believe they should be equally applicable to foreign private issuers as domestic issuers. However, there is no question, for the reasons noted in the proposing release there can be differences in the accounting standards which could result in double the disclosure on critical accounting policies that a US company needs to provide - one for the GAAP in the primary financial statements and the other for US GAAP. We believe that this places an unfair burden on foreign private issuers and would result in the discussion of accounting polices in an Operating and Financial Review ("OFR") overwhelming the rest of the discussion. Many foreign private issues disclose in their annual reports the same, or a very similar OFR as is filed with the SEC. This is usually because their home country has requirements that are conceptually similar to that of the Commission.

However, we believe many of these companies will elect to exclude such information from their annual report to shareholders as they will see the cost of printing, etc. as outweighing the benefits because under the proposed rule there will be no similar requirement in their home jurisdiction. While the MD&A disclosures generally focus on the primary financial statements, to reduce the burden, we recommend that foreign private issuers have the option of presenting the information only in accordance with US GAAP. This would be a logical conclusion as the disclosure is only for the benefit of US investors.

To the extent that foreign private issuers are required to provide this information, they should only be required to update the information on an interim basis in a registration statement in which they are required or elect to present US GAAP information. Historically, it is the presentation of US GAAP information in a registration statement that triggers the need to update other information such as OFR, Industry Guide data, etc. Other than that, any additional requirement would constitute a fundamental change in the way that foreign private issuers are required to provide information into the US market.

The concept of meeting with audit committees and reviewing with them the information that is required by SAS 61, 89 and 90 is new in many parts of the world. As the composition of audit committees, frequency of meeting, topics discussed is frequently different in foreign countries compared to the US, we do not believe that foreign private issuers should be required to disclose if these issues have been discussed with the audit committee.

64. Are there specific items of the proposed disclosure that would be less appropriate for foreign private issuers? If so, what should substitute for that disclosure?

    See the text of #63 above for comments on Foreign Private Issuers and their unique situation under the proposed rule.

65. Should we consider applying an updating requirement to the proposed critical accounting estimates disclosure for foreign private issuers that do not file quarterly reports? If so, what should trigger that updating requirement?

    See the text of comment #63 above for comments on Foreign Private Issuers and their unique situation under the proposed rule.

66. Are there reasons to distinguish this aspect of MD&A disclosure when foreign private issuers otherwise may not prepare MD&A-equivalent disclosure on a quarterly basis?

    See the text of comment #63 above for comments on Foreign Private Issuers and their unique situation under the proposed rule.

67. Should we require the proposed MD&A disclosure for small business issuers with no recent revenues even though MD&A disclosure by them is otherwise not required? If so, why?

If the Commission considers the information elicited by the rule to be valuable, then there is no reason to have differing requirements for SB filers, other than to accommodate the different number of years for which disclosure is provided. Investors' informational needs do not vary directly according to the market capitalization or revenue levels of the companies in which they invest.

68. Are there modifications or simplifications to the proposed disclosure requirements that we could make, consistent with our ongoing simplification and reduction of burden for small business issuers that still would achieve the goal of providing investors with an adequate understanding of the implications of management's critical accounting estimates and its initial adoption of accounting policies with a material impact?

    See our response to #67 above.

69. Should we create an exemption from the quarterly updating, or simplify it, for small business issuers?

    See our response to #67 above.

70. Is there any need for further guidance from the Commission with respect to the application of either the statutory or rule safe harbors?

    Safe harbors only work effectively with respect to Federal or Commission actions. Registrant risk is elevated by civil actions from the plaintiffs bar. The only way to really protect registrants is to eliminate the three-year look back provision and pick up any new analysis under the proposal on a going forward basis (i.e., more like the SAB 101 implementation model).

71. Is the additional information elicited by the proposals useful to investors, other users of company disclosure and readers of a company's financial statements? If not, how can it be improved to achieve that goal?

    No. The data will be voluminous and, with respect to the average reader, confusing at best, misleading at worst.

72. In addition to the requirements we propose, are there particular aspects of critical accounting estimates or their development or impact that the proposals should specifically require companies to address? If so, what are they?

    See the full text of our letter. Insight into estimation processes related to key drivers of the results of the business would be far more valuable than dwelling on details of particular estimates.

73. In addition to the requirements we propose, are there particular aspects concerning a company's initial adoption of an accounting policy that the proposals should specifically require companies to address? If so, what are they?

No. APB 20 should be adequate if properly enforced and supplemented by an SAB expressing the Staff's views.

74. Is disclosure necessary concerning the procedures that management follows in selecting its critical accounting estimates? If so, what additional disclosure should be provided?

    We believe this should become a primary focus area. We believe additional information as to the management processes utilized to arrive at an appropriate accounting policy will be more useful to investors than a display of the options that were not selected, or comparisons to other peer companies whose situations differ from the registrant's.

75. Is additional disclosure or regulation necessary or appropriate concerning the role of the audit committee in discussing the critical accounting estimates and the disclosure about them that management drafts?

    We believe that other pending SEC and SRO proposal will adequately address this area without modifying the requirements of MD&A.

76. In addition to the proposed disclosure, should we adopt a specific requirement that a company must provide any other information that is needed to make the proposed disclosure reflective of management's view of the critical accounting estimates and the initially adopted policies being discussed?

    No. See our response to #74 above.

77. For critical accounting estimates of fair value, should we mandate the example in FR-61 as part of these rules? If yes, do other areas exist for which that type of detailed disclosure would be appropriate?

    The SEC should take the steps needed to elevate the stature of FR-61 from cautionary advice to "rule" if it believes the disclosures are worth making. We supported the concepts of FR-61 and have always believed in its potential value.

78. If the proposed disclosure would involve competitive or other sensitive information, are there any mechanisms that would ensure full and accurate disclosure while reducing a company's risk of competitive harm?

    See the full text of our response letter regarding tax and other accruals.

79. Are there some aspects of the proposed disclosure that should be retained while eliminating other parts of the proposed disclosure? We solicit comment on the desirability of adopting some sections of the proposed rules, but not all sections.

    The comments of the public should be considered and a re-exposure plan adopted.

80. Is there evidence that market forces would elicit the disclosures we are proposing?

    Current market conditions seem to amply demonstrate that opacity is no longer rewarded.

81. What are the relative costs and benefits of pursuing these or other alternative regulatory solutions to elicit disclosure of the application of critical accounting policies?

    We are not in a position to provide such data, but believe any benefits, beyond those achieved by complying with existing rules, to be minimal, while the costs of compliance will be material.

82. We solicit quantitative data to assist our assessment of the benefits of identifying critical accounting estimates and analyzing their effects on the financial statements and explaining the initial adoption of material accounting policies and their impacts in the manner proposed.

    We are not in a position to provide such data, but believe any benefits, beyond those achieved by complying with existing rules, to be minimal, while the costs of compliance will be material.

83. Would the proposed disclosure serve as a deterrent for improper accounting practices?

    The SEC's existing rules already serve such deterrent purposes.

84. What types of expenses would companies incur in order to comply with the proposed disclosure requirements?

    We are not in a position to provide such data, but believe the costs will be significant.

85. What would the average printing and dissemination costs be for each firm?

    We are not in a position to provide such data, but believe the costs will be significant.

86. We solicit quantitative data to assist our assessment of the compliance costs of identifying critical accounting estimates and the initial adoption of accounting policies that have a material impact and analyzing their effects on the financial statements in the manner proposed.

    We are not in a position to provide such data, but believe the costs will be significant.

87. To what degree would our proposed disclosure requirements create competitively harmful effects upon public companies?

    We believe that damages to registrants could be significant. See the full text of our letter for discussion.

88. How could we minimize those effects?

    The effects can be minimized by providing an exclusion for estimates related to tax environmental and other litigation liabilities that have been estimated. We believe that damages to registrants could be significant. See the full text of our letter for discussion.

89. What are the potential litigation and liability costs that would be associated with the proposed disclosure requirements?

These costs will be material. See the full text of our letter which notes that in the current environment almost any incremental disclosure placed on file for any reason, including responding to SEC CorpFin comments, invites the plaintiffs' bar to bring cases alleging reliance on previously filed documents that are now, in retrospect, conveniently judged to have been incomplete at the time of original filing.

90. Would small business issuers on average have fewer critical accounting estimates to discuss?

    See our response to #67 above.

91. Who would prepare the disclosure for small business issuers?

    See our response to #67 above.

92. What types of expenses would be incurred to prepare this disclosure?

    We cannot estimate these cost but they would be significant. Due to the liability issues noted in our letter, they would require thorough legal review prior to filing.

93. On average, would the U.S. GAAP reconciliation cause foreign private issuers to have more critical accounting estimates and more initial adoptions of accounting policies to discuss than a U.S. company? If so, how many more?

    As the Staff may have noted under FR-60, these disclosures need to be provided for both the local GAAP and the US-GAAP reconciled amounts. The additional disclosure requirements would be significant. See our response to #63 above in which we recommend that an option to provide data on a US-GAAP basis only be considered for MD&A disclosures across the board.

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