

more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a) (3), (5), (6), (7)(i)(C), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, May 6, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;
Institution and settlement of injunctive actions.

The subject matter of the Closed Meeting scheduled for May 8, 2003 will be:

Formal orders of investigation;
Institution and settlement of administrative proceedings of an enforcement nature; and
Institution and settlement of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: April 29, 2003.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8221; 34-47743; IC-26028; FR-70]

Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter

AGENCY: Securities and Exchange Commission.

ACTION: Policy statement.

SUMMARY: The Securities and Exchange Commission has determined that the Financial Accounting Standards Board (FASB or Board) and its parent organization, the Financial Accounting Foundation (FAF), satisfy the criteria in section 108 of the Sarbanes-Oxley Act of 2002 and, accordingly, FASB's financial accounting and reporting standards are recognized as "generally accepted" for purposes of the federal securities laws. As a result, registrants are required to continue to comply with those standards in preparing financial statements filed with the Commission, unless the Commission directs otherwise. Our determination is

premised on an expectation that the FASB, and any organization affiliated with it, will address the issues set forth in this statement and any future amendments to this statement, and will continue to serve investors and protect the public interest. This policy statement updates Accounting Series Release No. 150, issued on December 20, 1973, which expressed the Commission's intent to continue to look to the private sector for leadership in establishing and improving accounting principles and standards through the FASB with the expectation that the body's conclusions will promote the interests of investors.

FOR FURTHER INFORMATION CONTACT:

Scott A. Taub, John W. Albert, or Robert E. Burns, Office of the Chief Accountant, at (202) 942-4400, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-1103.

SUPPLEMENTARY INFORMATION:

I. Background

The federal securities laws set forth the Commission's broad authority and responsibility to prescribe the methods to be followed in the preparation of accounts and the form and content of financial statements to be filed under those laws,¹ as well as its responsibility to ensure that investors are furnished with other information necessary for investment decisions. To assist it in meeting this responsibility, the Commission historically has looked to private-sector standard-setting bodies designated by the accounting profession to develop accounting principles and standards. At the time of the FASB's formation in 1973, the Commission reexamined its policy and formally recognized pronouncements of the FASB that establish and amend accounting principles and standards as "authoritative" in the absence of any contrary determination by the Commission. The Commission concluded at that time that the expertise and resources that the private sector could offer to the process of setting accounting standards would be beneficial to investors.²

On July 30, 2002, President Bush signed the Sarbanes-Oxley Act of 2002.

¹ See e.g., sections 7, 19(a) and Schedule A, items (25) and (26) of the Securities Act of 1933, 15 U.S.C. 77g, 77s(a), 77aa(25) and (26); sections 3(b), 12(b) and 13(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(b), 78l(b) and 78m(b); sections 5(b), 14, 15 and 20 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79e(b), 79n, 79o and 79t; sections 8, 30(e), 31 and 38(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-8, 80a-29(e), 80a-30 and 80a-37(a).

² Accounting Series Release No. 150 (December 20, 1973).

Section 108 of that Act amends section 19 of the Securities Act of 1933³ to establish criteria that must be met in order for the work product of an accounting standard-setting body to be recognized as "generally accepted." A new subsection 19(b) indicates that in carrying out its authority under section 19 and under section 13(b) of the Securities Exchange Act of 1934⁴ the Commission may recognize as "generally accepted" for purposes of the federal securities laws any accounting principles established by a standard setting body that:

- Is organized as a private entity;
- Has, for administrative and operational purposes, a board of trustees serving in the public interest, the majority of whom are not, concurrent with their service on such board, and have not been during the two-year period preceding such service, associated persons of any registered public accounting firm;
- Is funded as provided in section 109 of the Sarbanes-Oxley Act;
- Has adopted procedures to ensure prompt consideration, by majority vote of its members, of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices; and
- Considers, in adopting accounting principles, the need to keep standards current in order to reflect changes in the business environment, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors.

Representatives of the FASB and FAF have requested that "[t]he FASB * * * continue to be the designated organization in the private sector for establishing standards of financial accounting and reporting."⁵

II. Qualification and Recognition of the FASB

A. Structure of the FASB

In assessing compliance with the provisions of section 108, the Commission has evaluated the organizational structure, operations, and procedures of both the FAF and the FASB.

³ 15 U.S.C. 77s.

⁴ 15 U.S.C. 78m.

⁵ Letter dated August 16, 2002 to SEC Chairman Harvey L. Pitt from Robert H. Herz, Chairman, FASB and Manuel H. Johnson, Chairman and President, FAF. The Act does not restrict the Commission's ability to develop accounting principles on its own, and does not limit the number of private-sector bodies the Commission may recognize.

The FAF is comprised of independent trustees and is responsible for overseeing, funding,⁶ and appointing members of the Board, as well as selecting members of an advisory body.⁷ The Commission has been informed that the majority of the FAF trustees are not, and have not been during the two-year period preceding their service on the FAF, associated with a public accounting firm. Based on our past relationship with the FAF, we believe that the FAF serves the public interest. Accordingly, the FAF meets the applicable criteria in section 108 of the Sarbanes-Oxley Act for the board of trustees of a recognized private sector accounting standard setter.

The Board is responsible for promulgating financial accounting and reporting standards. It currently has seven members who have expertise in accounting and financial reporting. Members generally are appointed for five-year terms and can be reappointed to one additional term. Board members are full time employees of the FAF.

B. Commission Oversight of FASB Activities

While the Commission consistently has looked to the private sector in the past to set accounting standards, the securities laws, including the Sarbanes-Oxley Act, clearly provide the Commission with authority to set accounting standards for public companies and other entities that file financial statements with the Commission.⁸ In addition, recognition of standards set by a private sector standard-setting body as "generally accepted" is only appropriate under section 108 of the Sarbanes-Oxley Act if,

⁶ The funding provisions under section 109 of the Sarbanes-Oxley Act replace the FAF's funding responsibilities; the FAF will continue to be responsible for the fee requests, including establishing the FASB's budget for review by the Commission each year.

⁷ The FASB receives input from, among other sources, a standing advisory body, the Financial Accounting Standards Advisory Council (FASAC), which is comprised of members from the accounting and business communities, academia, and professional organizations, all of whom share an interest in fostering quality financial reporting and disclosure. FASAC's primary mission is to advise the FASB on its projects and agenda. In addition, the FASB has established a User Advisory Council (UAC) to assist the FASB in raising awareness of how investors and investment professionals, equity and credit analysts, and rating agencies use financial information. The FASB has recruited more than 40 professionals, representing a variety of investment and analytical disciplines, to participate on the UAC.

⁸ Section 108(c) of the Sarbanes-Oxley Act states, "Nothing in this Act, including this section * * * shall be construed to impair or limit the authority of the Commission to establish accounting principles or standards for purposes of enforcement of the securities laws."

among other things, the Commission determines that the private sector body "has the capacity to assist the Commission in fulfilling the requirements of * * * the Securities Exchange Act * * * because, at a minimum, the standard setting body is capable of improving the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws."⁹ As noted above, section 108 also emphasizes the Commission's responsibility to determine that the standard setting body:

- Has "procedures to ensure prompt consideration * * * of changes to accounting principles necessary to reflect emerging accounting issues and changing business practices";

- Considers the need to amend standards "to reflect changes in the business environment"; and

- Considers, to the extent necessary or appropriate, international convergence of accounting standards.

Given the Commission's responsibilities under the securities laws and our specific responsibilities under the Sarbanes-Oxley Act to make findings regarding the procedures, capabilities, activities, and results of any designated accounting standards-setting body, we believe that:

- The FAF and FASB should give the Commission timely notice of, and discuss with the Commission, the FAF's intention to appoint a new member of the FAF or FASB.¹⁰ While the FAF makes the final determinations regarding the selection of FASB and FAF members, we believe that to fulfill our statutory responsibilities we should provide the FAF with our views and that the FAF should consider those views in making its final selection. The Commission, FAF, and FASB share the belief that the qualifications and appropriateness of each member of the FAF and the FASB are critical if the

⁹ See Securities Act of 1933, section 19(b)(1)(B), as added by the Sarbanes-Oxley Act.

¹⁰ Such consultations have occurred in the past. See, e.g., SEC Press Release No. 96-87, "FAF and SEC Reach Agreement on Changes in Composition of Accounting Foundation: Appointing Three New Trustees to Serve," dated July 8, 1996, which states, "The FAF selected the new At-Large Trustees in consultation with the SEC"; SEC Annual Report 1996, at 90-91, which states, "The change in composition of the FAF's Board was made in consultation with the SEC to include a greater representation by those who do not have a special interest in the outcome of accounting standards setting," and FAF, *1996 Annual Report of the Financial Accounting Foundation*, at 5, which states, "In consultation with the chairman of the Securities and Exchange Commission, the FAF agreed in July to change the composition of the Foundation's Board."

FASB is to continue to be a premier private-sector standards-setting body.

- The FASB, in its role of "assist(ing) the Commission in fulfilling the requirements of the Securities Exchange Act,"¹¹ should provide timely guidance to public companies, accounting firms, regulators and others on accounting issues that the Commission considers to be of immediate significance to investors. The Commission and its staff, however, do not prohibit the FASB from also addressing other topics, and do not dictate the direction or outcome of specific FASB projects so long as the conclusions reached by the FASB are in the interest of investor protection. We expect that the Commission staff¹² will refer issues to the FASB or one of its affiliated organizations¹³ when those issues may warrant new, amendments to, or formal interpretations of, accounting standards. We also expect that the FASB will address such issues in a timely manner. On those occasions when the FASB may determine that consideration of the issue is not advisable or that the issue cannot be resolved within the time frame acceptable to the Commission,¹⁴ we expect that the FASB promptly will notify the Commission or its staff, provide us with its views regarding an appropriate resolution of the issue, and diligently work with us and our staff to ensure the protection of investors from misleading or inadequate accounting or disclosures.

- Because the Commission and FASB share the common goal of providing investors with the disclosure of meaningful financial information, we anticipate continuation of our collegial working relationship with the FASB. To that end, we expect that, when

¹¹ Section 19(b)(1)(B) of the Securities Act of 1933, as added by section 108 of the Sarbanes-Oxley Act of 2002.

¹² The Commission staff will continue to take such action on a day-to-day basis as may be appropriate to resolve specific accounting and reporting issues under the particular factual circumstances involved in filings and reports of individual registrants.

¹³ For example, the issue may be referred to the FASB's Emerging Issues Task Force (EITF). The EITF is comprised of approximately 13 members who serve, generally without compensation, on a part-time basis. EITF members are partners in large, medium and small accounting firms, business executives, financial analysts and other users of financial statements, and academics. Upon ratification of an EITF consensus by the FASB, the consensus is published as part of the EITF's minutes and may be relied on by Commission registrants and others in the preparation of financial statements that purport to conform to generally accepted accounting principles.

¹⁴ We expect such occasions will be infrequent because the Commission and the FASB share the goal of providing timely guidance to public companies and accounting firms on matters that are significant to investors.

requested to do so, the FASB will make information and staff reasonably available to facilitate our, or our staff's, understanding and implementation of a FASB standard.

The Commission and its staff intend to work with the FAF and the Board to ensure that proper oversight procedures and policies are in place to allow the Commission to assess whether the FASB continues to meet the characteristics of an accounting-standard setter that are discussed in the Sarbanes-Oxley Act.

C. Key FASB Initiatives

As noted earlier, the Commission has treated FASB accounting standards as "authoritative" since 1973. In order for U.S. accounting standards to remain relevant and to continue to improve, however, the Commission expects the FASB to:

- Consider, in adopting accounting principles, the extent to which international convergence on high quality accounting standards is necessary or appropriate in the public interest and for the protection of investors,¹⁵ including consideration of moving towards greater reliance on principles-based accounting standards whenever it is reasonable to do so;
- Take reasonable steps to continue to improve the timeliness with which it completes its projects, while satisfying appropriate public notice and comment requirements;¹⁶ and
- Continue to be objective in its decision-making and to weigh carefully the views of its constituents and the expected benefits and perceived costs of each standard.¹⁷

D. FASB's Independence

While effective oversight of the FASB's activities is necessary in order for the Commission to carry out its responsibilities under the securities laws, we recognize the importance of the FASB's independence. By virtue of today's Commission determination, the FASB will continue its role as the preeminent accounting standard setter in the private sector. In performing this role, the FASB must use independent judgment in setting standards and should not be constrained in its

exploration and discussion of issues. This is necessary to ensure that the standards developed are free from bias and have the maximum credibility in the business and investing communities.¹⁸

E. Conclusion

Based on available information, the organizational structure, operating activities, and procedures of the FAF and FASB meet the criteria in section 108 the Sarbanes-Oxley Act.¹⁹ In addition, the Commission has determined that the FASB has the capacity to assist the Commission in fulfilling the requirements of subsection 19(a) of the Securities Act of 1933 and section 13(b) of the Securities Exchange Act of 1934 and is capable of improving both the accuracy and effectiveness of financial reporting and the protection of investors under the securities laws.²⁰ Accordingly, the standards set by the FASB are recognized as "generally accepted" under section 108 of the Sarbanes-Oxley Act.

As required under the securities laws, including the Sarbanes-Oxley Act, the Commission will monitor the FASB's procedures, qualifications, capabilities, activities, and results, as well as the FAF's and FASB's ongoing compliance with the expectations and views expressed in this policy statement. We will issue an appropriate revision of this policy statement if we determine that the FAF or FASB no longer meets the statutory criteria or expectations discussed in this policy statement, or if we consider it otherwise necessary or appropriate to do so.

III. Regulatory Requirements

This policy statement is not an agency rule requiring notice of proposed rulemaking, opportunities for public participation, and prior publication under the provisions of the

¹⁸ The occasions where the Commission has not accepted a particular FASB standard have been rare due, in part, to our recognition and support of FASB's independence. As noted elsewhere in this release, the Commission and its staff do not prohibit the FASB from addressing a particular topic and do not dictate the direction or outcome of specific FASB projects provided that the conclusions reached by the FASB are in the interest of investor protection.

¹⁹ As noted above, one of the statutory criteria is that the recognized accounting body is funded as provided in section 109 of the Sarbanes-Oxley Act. We are providing an endorsement of the FASB so that it may begin to work with the Public Company Accounting Oversight Board to implement the funding mechanisms in section 109. Our recognition of the FASB is in anticipation of and with the expectation that this funding will be forthcoming in the near term.

²⁰ See, section 108(a) of the Sarbanes-Oxley Act; section 19(b)(1)(B) of the Securities Act of 1933, 15 U.S. 77s(b)(1)(B).

Administrative Procedure Act (APA). Similarly, the provisions of the Regulatory Flexibility Act, which apply only when notice and comment are required by the APA or another statute, are not applicable.

IV. Codification Update

The "Codification of Financial Reporting Policies" announced in Financial Reporting Release No. 1 (April 15, 1982) [47 FR 21028] is updated as follows:

1. By adding at the end of Section 101, under the Financial Reporting Number (FR-70) assigned to this policy statement, the text in the policy statement beginning with the second paragraph in Section I. and all of Section II. of this release.

2. By renumbering the footnotes from this release that are included in the Codification to run consecutively from number one through number 18.

The Codification is a separate publication of the Commission. It will not be published in the **Federal Register/Code of Federal Regulations**.

By the Commission.

Dated: April 25, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03-10716 Filed 4-30-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933, Release No. 8222/April 25, 2003, Securities Exchange Act of 1934, Release No. 47745/April 25, 2003; Order Regarding Section 103(a)(3)(B) of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 ("Act") established the Public Company Accounting Oversight Board ("PCAOB") and charged it with the responsibility of overseeing the audits of public companies that are subject to the U.S. Federal securities laws. Under the Act, the PCAOB's duties include the establishment of auditing, quality control, ethics, independence and other standards relating to public company audits. In connection with this standard-setting responsibility, section 103(a)(3)(B) of the Act provides that the PCAOB may adopt "any portion of any statement of auditing standards or other professional standards that the [PCAOB] determines satisfy the requirements of [the Act] and that were proposed by 1 or more professional groups of accountants' as initial or transitional standards, to the extent the PCAOB determines necessary. This section of

¹⁵ We expect that during its deliberations of an accounting issue the FASB will consider, among other things, international accounting standards addressing that issue.

¹⁶ These ideas, among others, are embodied in the FASB's current Rules of Procedure. To the extent that the FAF or FASB determines that inadequate staffing or resources hampers the timeliness of the FASB's processes, the Commission will review requests for increases in the FASB's budget in accordance with the procedures in section 109(e) of the Sarbanes-Oxley Act.

¹⁷ *Id.*