

# International Affairs

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*The SEC operates in a global marketplace. The Office of International Affairs works to protect U.S. investors and the integrity of U.S. markets by encouraging international regulatory and enforcement cooperation, negotiating information sharing arrangements for regulatory and enforcement matters, encouraging the adoption of high quality regulatory standards worldwide, and conducting international technical assistance programs.*

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## What We Did

- Worked with foreign authorities to address cross-border fraud, including concluding three new arrangements on information sharing.
  - Promoted the strengthening and implementation of high quality international accounting standards.
  - Worked with foreign authorities to address weaknesses revealed in connection with recent corporate failures and to restore investor confidence. These efforts included the adoption of principles on auditor oversight, auditor independence, and disclosure and transparency.
  - Offered technical assistance to regulators of emerging securities markets.
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## Enforcement Cooperation

### SEC Actions

The SEC continues to need assistance from foreign authorities to protect U.S. investors from cross-border fraud. To accomplish this, the SEC has developed formal and informal relationships with foreign authorities for enforcement cooperation. To date, the SEC has entered into over 30 formal information-sharing arrangements with foreign counterparts. These arrangements have enabled the Commission to bring significant enforcement actions based on information gathered from abroad.

<b>Fiscal 2002 Enforcement Cooperation Results</b>	
Requests to Foreign Authorities for Enforcement Assistance	448
Requests for Enforcement Assistance from Foreign Authorities	353

The SEC filed a record number of enforcement actions with international elements during the past fiscal year. Several of the actions are described below.

- *SEC v. ACLN*.<sup>28</sup> The Commission filed a civil injunctive action in U.S. District Court against ACLN, Ltd., a Cypriot corporation operating from Antwerp, Belgium that purportedly shipped used vehicles to North and East Africa and sold new cars in that region. The SEC sued three of ACLN's officers and

its Cyprist auditor. The complaint alleged that ACLN was the vehicle for an elaborate financial fraud (overstating assets/revenue, nonexistence of a new car line of business) that resulted in losses of hundreds of millions of dollars to investors in the United States and abroad. The alleged fraud included the falsification of bank records to distort the company's financial picture, and the sale of at least \$80 million of ACLN stock by company principals when they knew the financial disclosures were fraudulent. The Commission received assistance from several foreign government agencies in Belgium, Denmark, Luxembourg, Monaco, the Netherlands, Norway and the United Kingdom to freeze approximately \$45 million in bank accounts. The SEC will seek to have proceeds returned to defrauded investors.

- *SEC v. Millennium Financial, Ltd.*<sup>29</sup> This case involved a sophisticated international boiler-room operation. The SEC filed suit in U.S. District Court alleging that Millennium had contacted investors in at least 20 different countries and fraudulently sold them “pre-IPO” stocks of several private U.S. issuers. Millennium engaged in a variety of practices that were apparently designed to avoid detection and minimize the chances that any single country would have the basis, or the motivation, to bring an enforcement action. For example, Millennium claimed to have offices in several different countries, including Singapore, Mexico, Switzerland, and Brazil. However, these were only “virtual offices” used to circuitously route mail, phone calls, and faxes to other locations. Millennium also routed investor funds through a variety of banks in several different jurisdictions, including Guernsey, the British Virgin Islands, Hong Kong, Nevis, the Seychelles, and the United States. With the cooperation of approximately ten foreign regulatory and law enforcement authorities, the Commission was able to file an action

against Millennium within four months of starting its investigation. In addition, with the assistance of Nevis, over \$1.3 million in investor funds were frozen.

- *SEC v. AremisSoft Corp.*<sup>30</sup> The SEC obtained an injunction in the U.S. District Court for the Southern District of New York against AremisSoft Corporation, an international software company with offices in New Jersey, London, England, Cyprus, and India, and its former principal officers. The SEC's action is based on evidence of financial fraud in which the company reported phony acquisitions and phony customers, and made other misrepresentations regarding company revenue. The complaint also alleges that the former AremisSoft principal officers engaged in insider trading by secretly selling millions of shares of AremisSoft stock through various affiliated offshore entities while they had knowledge that the company's public disclosures were materially false. The SEC obtained assistance in securing asset freezes and records from numerous foreign authorities, including authorities in the Isle of Man, Switzerland, United Kingdom, and Cyprus. The SEC also worked closely with the U.S. Attorney's Office that obtained indictments of several former AremisSoft principals.
- *SEC v. Lernout & Hauspie.*<sup>31</sup> The Commission filed a civil injunctive action in the U.S. District Court for the District of Columbia against Lernout & Hauspie Speech Products, N.V., a developer, licensor, and provider of speech and language technologies, headquartered in Ieper, Belgium, and Burlington, Massachusetts. The SEC's complaint alleged that, from 1996 through the second quarter of 2000, while its common stock was listed on the Nasdaq National Market System and Nasdaq Europe, Lernout & Hauspie engaged in a variety of fraudulent schemes to inflate its reported revenue and income. The result of this conduct was an international financial scandal, the

destruction of Lernout & Hauspie as an operating company, and a loss of at least \$8.6 billion dollars in market capitalization, borne by investors in Belgium, the United States and elsewhere. The SEC received assistance from the U.S. Attorney for the Southern District of New York, the Belgian Ministry of Justice, and the Jersey Attorney General. The Commission's investigation is continuing with respect to other persons and entities.

### Information-Sharing Initiatives

The Commission also worked on bilateral and multilateral approaches to strengthen international information sharing and cooperation, thereby enhancing its ability to investigate and prosecute cross-border fraud. These initiatives included the following:

- *International Organization of Securities Commissions' Multilateral Memorandum of Understanding.* In the wake of the events of September 11, 2001, the International Organization of Securities Commissions (IOSCO) undertook to enhance the sharing of information critical to the successful investigation and prosecution of cross-border securities violations. The result was the adoption of a Multilateral Memorandum of Understanding (MOU) in May 2002. The MOU focuses on two aspects of cross-border enforcement cooperation. First, the MOU specifies the particular types of information a signatory must be able to provide, such as bank, brokerage, and client records. Second, the MOU mandates the protection of such information from disclosure, while allowing its use for compliance with the securities laws, investigations and enforcement proceedings, surveillance or enforcement activities of self-regulatory organizations, and assistance in criminal prosecutions. The MOU is open to all IOSCO members that demonstrate their legal authority to comply with its provisions. The SEC was

among the first group of IOSCO members to sign the MOU in the fall of 2002.

- *Statement of Intent with the Japanese Financial Supervisory Authority.* In May 2002, the Commission and the U.S. Commodity Futures Trading Commission (CFTC) signed a Statement of Intent Concerning Cooperation, Consultation and the Exchange of Information (SOI) with the Japanese Financial Supervisory Authority (JFSA). The SOI establishes a framework to facilitate consultation and cooperation between the SEC and the JFSA, and expresses each party's commitment to provide assistance in enforcement matters. It was accompanied by an exchange of diplomatic Notes Verbale concerning the use of information by criminal authorities.
- *Memorandum of Understanding with the Jersey Financial Services Commission.* In May 2002, the Commission and the CFTC completed negotiations and signed an MOU with the Jersey Financial Services Commission. The MOU and new legislation in Jersey should facilitate the process of requesting and obtaining information from this significant offshore financial center.

## **Initiatives to Address Weaknesses in Market Foundations and Strengthen International Standards**

The Commission identified and responded to various regulatory concerns raised by recent large corporate failures. The response included the implementation of the Sarbanes-Oxley Act of 2002 and an evaluation of its international impact, as well as the development of proposals by IOSCO and other organizations relating to auditor oversight, auditor independence, disclosure and transparency, and other areas of importance to the strength of the

infrastructure supporting financial markets. The Commission undertook these initiatives in the following contexts.

### Regulatory Dialogue

The SEC is focusing on implementing the provisions of the Sarbanes-Oxley Act as mandated by Congress. The Act makes no distinction between U.S. issuers and foreign private issuers, and the Commission intends to give the law full effect. Yet the SEC is cognizant of the fact that the requirements of the Sarbanes-Oxley Act may come into conflict with requirements under which foreign private issuers and other market participants are subject in their home jurisdictions.

To this end, the Commission staff established regular dialogue with foreign counterparts in Europe, Asia, and Latin America for the purpose of identifying SEC proposals that conflict with foreign laws or foreign stock exchange requirements, and discussing the manner in which foreign laws and regulations address the same issues as the Sarbanes-Oxley Act. The dialogue will be useful as the Commission seeks to fulfill the mandate of the Act in ways that accommodate foreign requirements and regulatory approaches.

### IOSCO Chairs' Committee

IOSCO created the Chairs' Committee to develop an international response to the concerns relating to accounting, auditing, and disclosure raised by recent corporate failures. The committee, which included representatives from the SEC, was tasked with developing general principles as guidance to regulators undertaking reform in each of these three areas. In October 2002, the Chairs' Committee adopted key principles that are broadly consistent with the Commission's approach in these areas. The principles describe essential features of regulatory systems requiring transparency and disclosure by listed entities, the independence of external auditors, and the need for public oversight of the audit function. The principles serve as a benchmark to which regulators can refer in addressing auditor

independence, auditor oversight, and disclosure and transparency issues.

## International Accounting Standards

For many years, the Commission has been active, both directly and through IOSCO and other international organizations, in encouraging the development and use of a high quality set of global accounting standards that could be used in cross-border capital formation. In May 2002, IOSCO issued a communiqué encouraging the International Accounting Standards Board (IASB) and national standard setters to work cooperatively and expeditiously to achieve convergence in order to facilitate cross-border offerings and listings. It also encouraged regulators to address the broader issues of consistent interpretation, application, and enforcement of international accounting standards. The Commission already allows foreign issuers to use International Accounting Standards Committee standards, subject to reconciliation to U.S. Generally Accepted Accounting Principles (GAAP).

On October 29, 2002, the Financial Accounting Standards Board (FASB) and the IASB announced that they will work together toward greater convergence between GAAP and International Accounting Standards (IAS). The Commission applauded this decision and supported efforts towards convergence on high-quality standards that provide investors consistent, comparable, relevant and reliable information. In noting the need to reduce differences between GAAP and IAS, the Commission staff has encouraged joint projects of the FASB and IASB to accomplish this goal, including reducing many differences in the short-term, over the next two years prior to the European Union's conversion to IAS in 2005. The Commission also noted that an effective infrastructure for interpretation and enforcement of accounting standards, and cooperation among regulators, will be critical to realizing the benefits of convergence.



## IOSCO's Core Principles

In 1998, IOSCO adopted the "Objectives and Principles of Securities Regulation" (the Core Principles), which represent consensus among securities regulators worldwide on sound practices for regulating securities markets. To promote implementation of the Core Principles, the SEC and other IOSCO members are conducting self-assessments regarding their compliance with the Core Principles. In addition, IOSCO is preparing a methodology, which will be used by the international financial institutions (*e.g.*, the International Monetary Fund and the World Bank) in their reform and restructuring work. The methodology also may be used by IOSCO to further assess the degree of members' implementation of the Core Principles.

## Financial Action Task Force

The Financial Action Task Force (FATF), an inter-governmental anti-money laundering organization, first issued its Forty Recommendations on Anti-Money Laundering in 1990 as a set of comprehensive guidelines for governments to follow in combating money laundering. In light of global technological and financial changes, the FATF launched a review of the Forty Recommendations aimed at strengthening, clarifying and refining certain key areas. The revisions would strengthen the standards and extend their scope. Because many of the Forty Recommendations apply to financial institutions, the review has implications for securities firms. The review is also of interest to securities regulators, given that the Recommendations also address cross-border information sharing and cooperation to combat money laundering and predicate offenses, such as securities fraud. The SEC, through the U.S. delegation to the FATF and IOSCO, worked to ensure that the FATF Forty Recommendations take into account the manner in which securities markets operate and are regulated, and the role played by securities regulators in combating money laundering and financial crime. The advice was rendered in the interest of improving the international anti-money laundering regime while

ensuring that legitimate securities businesses are permitted to operate as efficiently as possible.

## Financial Stability Forum

The Commission continues to work together with the U.S. Department of the Treasury and the Federal Reserve Board on Financial Stability Forum projects to address systemic threats to financial stability. In the past year, work focused on issues relating to vulnerabilities in the international financial system and issues raised by recent corporate failures.

## **Regional Initiatives**

### European Union

The U.S. Department of the Treasury is leading a team of high-ranking officials from U.S. financial regulators, including the SEC and the Federal Reserve Board, in a dialogue with representatives of the European Commission on regulatory and legislative matters relating to financial markets. The dialogue has focused on matters relating to access to U.S. and EU capital markets. U.S. interest in the dialogue centers on the Financial Services Action Plan (FSAP) (designed to develop a single European capital market by 2005) and its impact on the regulation of U.S. market participants. The meetings have contributed to greater understanding of the concerns and interests relating to financial markets on both sides of the Atlantic.

### Latin America

Through the Council of Securities Regulators of the Americas (COSRA), a grouping of securities regulators in the western hemisphere, the SEC participated in an examination of the legal, regulatory, and operational structures of members' clearance and settlement systems, focusing specifically on delivery versus payment and settlement assurance. COSRA received wide support for its efforts in this area from other international groups

such as the World Bank, the InterAmerican Development Bank and CEMLA (Centro de Estudios Monetarios Latino Americanos).

## **Technical Assistance**

The Commission's technical assistance program helps emerging securities markets develop regulatory structures that promote investor confidence and capital formation. The program is multifaceted and includes training programs, review of foreign securities laws, and responses to specific inquiries from foreign regulators.

<b>Fiscal 2002 Technical Assistance Results</b>	
Requests for Technical Assistance from Foreign Authorities	234
U.S. Training Provided	191 Officials from 87 Countries
Overseas Training Provided	Over 325 Officials

The cornerstone of the Commission's technical assistance program is the International Institute for Securities Market Development, a two-week, management level training program covering the development and oversight of securities markets. In addition, the Commission conducts a week-long International Institute for Securities Enforcement and Market Oversight,

covering techniques for investigating securities law violations and oversight of market participants.

Commission staff participated in a range of overseas training initiatives including: regional enforcement and market oversight training programs in Bulgaria and Mexico; regional disclosure and corporate governance training programs in Hungary and Lithuania; a regional capital markets training program in Jordan; and bilateral training initiatives in China, India, and Russia.