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By *Jmi* E.O. 12065, Section 6-102
NARS, Date *5/2/2012*

REQUEST FOR COMMISSION ACTION

PRIVILEGED AND CONFIDENTIAL

July 15, 2002

ACTION MEMORANDUM

TO: The Commission

FROM: The Office of Legislative Affairs

RE: Congressional request for briefings, answers to certain questions, and documents concerning (1) WorldCom, Inc. ("WorldCom"), Tyco International, Inc. ("Tyco"), Global Crossing Ltd. ("Global Crossing"), Xerox Corporation ("Xerox"), Qwest Communications International, Inc. ("Qwest") (collectively the "July 2 letter companies") and (2) Rite Aid Corporation ("Rite Aid"), Adelphia Communications Corporation ("Adelphia"), Waste Management, Inc. ("Waste Management"), Kmart Corporation ("Kmart"), Sunbeam Corporation ("Sunbeam"), Enron Corporation ("Enron"), Peregrine Systems, Inc. ("Peregrine"), and MicroStrategy Incorporated ("MicroStrategy") (collectively the "July 5 letter companies").

- WorldCom - HO-9440
- Tyco - HO-9421
- Global Crossing - LA-2563
- Xerox - HO-9013
- Qwest - D-2455
- Rite Aid - NY-6800
- Adelphia - NY-1026
- Waste Management - HO-3372
- Kmart - HO-9410
- Sunbeam - HO-3433
- Enron - FW-2460
- Peregrine - HO-9404

RECOMMENDATION:

MicroStrategy - HO-8953

CONGBRIEF / CONG REQ

That the Commission (1) authorize SEC staff, if necessary, to brief the House Committee on Energy and Commerce ("the Committee") and its Subcommittee on Oversight and Investigations ("the Subcommittee") and their staff on non-public information related to this matter and to provide briefing updates upon further request from the Committee, (2) authorize SEC staff to provide Committee and Subcommittee staff with information, and copies of, or in certain cases only access to, documents as further specified herein, and (3) authorize Commission staff to provide similar briefings, information, and copies of documents and document access to other committees and subcommittees of Congress upon receipt of an initial written request and one day's advice memorandum notice to the Commission.

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COMMISSION ACTION

275-04A

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ACTION REQUESTED BY: 2:00 P.M., Wednesday, July 17, 2002

SUNSHINE ACT STATUS: Not applicable.

PRIOR COMMISSION ACTION: On February 1, 2002, the Commission authorized SEC staff to submit a letter, a memorandum, and certain documents relating to the Enron investigation (the documents being copies of staff comments on Enron's SEC filings) to the Committee and to provide their staff with a briefing and briefing updates upon request.

On June 13, 2002, the Commission authorized SEC staff to brief staff of the Committee and Subcommittee with respect to the Global Crossing and Qwest investigations. On July 12, 2002, the Commission authorized SEC staff to provide staff of the Committee and Subcommittee with access to investigative testimony taken in the Global Crossing and Qwest investigations from specified persons.

NOVEL, UNIQUE OR COMPLEX ISSUES: None.

OTHER OFFICES OR DIVISION CONSULTED: Division of Enforcement/Linda Thomsen, 942-4501
Office of Corporation Finance/Bill Tolbert 942-2891
Office of General Counsel/Gordon Seymour 942-0932

SOURCE OF CASE: Not Applicable.

PERSONS TO CONTACT: Laurie Stegman 202-942-4607
Jane Patterson 202-942-0119

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I. BACKGROUND

On July 2, 2002, Chairmen Tauzin and Greenwood wrote to Chairman Pitt (letter attached at A) concerning the July 2 letter companies, requesting separately for each company, by July 9, the answers to a series of questions relating to, for specified periods, the SEC's review of the company's filings; information and records concerning any SEC inquiries or investigations, whether formal or informal; records relating to internal SEC communications with respect to the company's accounting practices, disclosures, or financial statements; communications between the SEC and the company regarding such issues; and all records relating to any proposed or actual adjustments by the company's internal or external auditors to the company's SEC filings.

The July 2 letter also asked three more general questions about procedures at the SEC ("procedural questions"). These included: whether the SEC's procedures for (question 6) initiating an inquiry or investigation and (question 7) whether to take action on an inquiry or investigation have changed from 1998 to the present and how and (question 8) what procedures the Division of Corporation Finance uses for determining what company filings they review in connection with an inquiry or investigation and how they have changed. And, finally, the July 2 letter requested that the SEC provide to Committee staff by July 10 a briefing covering the "SEC's current investigations of WorldCom, Xerox, and Tyco."

Three days later, on July 5, 2002, Chairmen Tauzin and Greenwood wrote to Chairman Pitt (letter attached at B) indicating that they were expanding their review to include the July 5 letter companies. The July 5 letter requested separately for each company, by July 17, the answers to an almost identical series of questions to those posed in the July 2 letter, but omitting the questions relating to general SEC procedures. Finally, the July 5 letter asked that SEC staff contact Committee staff by July 8 to schedule a briefing to cover the details of the SEC's investigations of all of the July 5 letter companies.

SEC staff have subsequently contacted Committee staff both to note that meeting the time frames suggested for the requested briefings and other responses to the July 2 and July 5 requests is not possible and to narrow the scope of the briefings, responses, and documents requested to be provided.

Briefings

Committee and Subcommittee staff were briefed on the public aspects of the WorldCom, Xerox, and Tyco matters on July 15. Briefings on the public aspects of Rite Aid, Waste Management, Sunbeam, and MicroStrategy are likely to be scheduled during the weeks of July 22, 29, or August 5. If the Committee staff insist on going forward with briefings on investigative matters that are not yet public, those briefings will be scheduled subsequently. With the help of key staff from our relevant divisions, we explained to the Committee's point of contact what the enormity of the July 2 and July 5 requests would involve in terms of SEC staff time and resources, and subsequently

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agreed to a process where, if authorized by the Commission, we will begin giving the Committee some of the information they have requested – that which we can pull together most quickly, and which we think may be most helpful to them; then, after they have a chance to look at it, see where they want to drill down and respond accordingly. We also expressed concerns about supplying the Committee non-public information in the form of a response letter.

We hope to provide an initial response to the Committee's requests by July 17.

Responses

SEC staff are drafting written responses to the questions posed in these two letters. We hope to confine our responses as narrowly as possible, while providing more sensitive information via briefing rather than in writing. As previously discussed with Committee staff, SEC staff plan to initially provide written answers to questions 6, 7 and 8, and to provide preliminary information on question 1, 4 and 5 from the Division of Corporate Finance and on question 2 from the Division of Enforcement. Although the SEC staff plans to base some of these responses on public information, the response to question 8 does contain somewhat more information about our selection for review process than is public; the responses to questions 1, 4 and 5 will contain non-public information on which filings of the identified companies the Division of Corporate Finance reviewed; and the response to question 2 will be based entirely on non public information.

II. ENFORCEMENT RELATED DOCUMENTS

As noted above, SEC staff intend to narrow the scope of documents submitted in response to these requests insofar as is practicable, acceptable to the Committee and Subcommittee, and consistent with protecting the Commission's ongoing investigations into these matters. Access to any investigative transcripts to be provided will be at the Commission. We do not plan to allow Committee or Subcommittee staff to make or keep copies of such transcripts. And we do not plan to provide them with either copies of or access to internal Commission work papers. The Enforcement Division's production will consist of information identifying and describing closed inquiries and investigations concerning the companies named in the July 2 and July 5 letters, with additional information or documents provided only as required by the Committee and Subcommittee in follow up requests.

III. CORPORATION FINANCE RELATED DOCUMENTS

The July 2, 2002 and July 5, 2002 letters from Chairmen Tauzin and Greenwood requested information about the Division of Corporation Finance's examinations of the July 2 letter companies and the July 5 letter companies. The letters requested that the Commission identify all filings reviewed and provide a brief description of the reviews

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conducted and all records related to such reviews. The Division of Corporation Finance conducted at least one review of each of the July 2 letter companies for the time period requested. The Division of Corporation Finance is still gathering the July 5 letter companies' review.

IV. RECOMMENDATION

We recommend that the Commission (1) authorize SEC staff, if necessary, to brief the Committee and its Subcommittee and their staff on non-public information related to this matter and to provide briefing updates upon further request from the Committee, (2) authorize SEC staff to provide Committee and Subcommittee staff with information, and copies of, or in certain cases only access to, documents as further specified herein, and (3) authorize Commission staff to provide similar briefings, information, and copies of documents and document access to other committees and subcommittees of Congress upon receipt of an initial written request and one day's advice memorandum notice to the Commission.

Staff response letters providing answers to questions posed in, and transmitting documents requested by, the July 2 and July 5 letters; much of the requested information; a number of the documents to be provided, or to which access is to be provided; and several of the proposed staff briefings will contain nonpublic information, making Commission authorization necessary because members and employees of the Commission may not divulge nonpublic information without such authorization.¹

The staff responses will indicate that the information being provided contains nonpublic and sensitive information and will request that the Committee not publicly disclose this information without prior consultation with the Commission.

V. ATTACHMENTS

- (A) July 2, 2002 request from Chairmen Tauzin and Greenwood.
- (B) July 5, 2002 request from Chairmen Tauzin and Greenwood.

¹ Rule 3-7 of the Commission's Rules of Conduct, 17 C.F.R. § 220.753-3(b)(7), applies generally to all requests for nonpublic information. Rule 3-7 requires Commission authorization for disclosure of any nonpublic Commission documents, and information contained in such documents, or any confidential Commission information.