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# A U D I T M E M O R A N D U M N O . 3 7

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March 31, 2004

**To:** Paul Roye  
James McConnell  
Kenneth Fogash

**From:** Walter Stachnik

**Re:** Inappropriate Release of Non-Public  
Information

In September 2003, the Division of Investment Management's (IM) staff was informed that non-public internal documents had been posted on a publicly accessible Internet site (Global Securities Inc's LiveEDGAR site) and contacted us. These documents were related to an IM no-action letter.

The documents should have been sent to correspondence files in the Office of Filings and Information Services' (OFIS) Records Management Branch. Instead, they were sent to OFIS's Branch of Filer Support 2 (Filer Support) where they were made available to the public.

We conducted a limited evaluation of IM's internal controls designed to prevent the release of non-public no-action letter documents to the public. We reviewed a judgment sample of 71 no-action letters released by IM between Fiscal Year (FY) 2001 and 2004 to determine whether the release was appropriate. Also, we reviewed relevant laws, regulations and procedures and interviewed staff in IM and the Office of Filings and Information Services (OFIS). We performed our fieldwork between November 2003 and March 2004 in accordance with generally accepted government auditing standards.

We found that, in almost all cases, the release of documentation in our sample of no-action letters was appropriate. However, we found one additional case of an internal IM memorandum on LiveEDGAR. We have several recommendations, noted below.

## **Update Procedures**

IM has updated its procedures for delivering non-public documents to OFIS' Records Management Branch. Also, Filer Support has updated its written procedures to include the step to return misrouted non-public documents to IM and the other divisions.

## **Recommendation A**

The Division of Investment Management should update and follow its written procedures for processing no-action letter documents.

## **Recommendation B**

The Office of Filing and Information Services should update and follow its written procedures for processing no-action letter documents.

## **Internal Memoranda Classification**

IM's current procedures require staff to classify and stamp the front of no-action letter responses "non-public" as appropriate, but not any related internal memoranda. Stamping each internal memorandum separately would help the IM Library and OFIS staff to identify these documents as non-public.

## **Recommendation C**

IM should stamp internal memoranda sent to OFIS "non-public," as appropriate.

## **Check Documents**

The IM Library and Filer Support do not look through each public no-action document to ensure that non-public material is not included. Looking through each no-action document would further reduce the risk of releasing non-public material to the public.

## **Recommendation D**

The IM Library and OFIS should look through all materials sent by IM to OFIS for publication to detect inappropriately included non-public material.

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