

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 53882 / May 30, 2006**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 2434 / May 30, 2006**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12304**

_____	:	<b>ORDER INSTITUTING CEASE-AND-DESIST</b>
<b>In the Matter of</b>	:	<b>PROCEEDINGS, MAKING FINDINGS AND</b>
	:	<b>IMPOSING A CEASE-AND-DESIST ORDER</b>
<b>Tribune Company,</b>	:	<b>PURSUANT TO SECTION 21C OF THE</b>
	:	<b>SECURITIES EXCHANGE ACT OF 1934</b>
<b>Respondent.</b>	:	
_____	:	

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Tribune Company (“Tribune” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 (“Order”), as set forth below.

### III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

#### Summary

1. From at least January 2002 to March 2004, two Tribune newspapers, *Newsday* and *Hoy*, falsely inflated their paid circulation figures. As a consequence, Tribune reported inflated average paid circulation figures and erroneous circulation trends for these newspapers to the Commission and the investing public in its Forms 10-K for the years ended December 29, 2002, and December 28, 2003. The company also reported erroneous circulation trends based on the inflated paid circulation figures for these newspapers in its Forms 10-Q for the first quarter ended March 31, 2002, through the first quarter ended March 28, 2004. Moreover, in the same Forms 10-K and 10-Q, Tribune misstated its accounts receivable and accounts payable, as well as its circulation revenues and expenses as they related to *Newsday* and *Hoy*. This occurred because, at the time, Tribune did not have sufficient internal controls in place at these two newspapers. In 2004, Tribune revised downward the average paid circulation figures previously reported by *Newsday* and *Hoy* and disclosed that it had recorded a pretax charge of \$90 million in anticipation of settling advertisers' claims related to the inflated paid circulation figures reported by *Newsday* and *Hoy*.

#### Respondent

2. Tribune is a Delaware holding company with its principal executive office located in Chicago, Illinois. Tribune operates a publishing and broadcasting and entertainment business. Among other things, the company publishes fourteen daily newspapers in, among other places, New York, Chicago, Los Angeles, Fort Lauderdale and Orlando. Tribune's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and is listed on the New York Stock Exchange.

#### "Paid Circulation"

3. Advertisers consider several factors in selecting the newspapers in which they run advertisements. One significant consideration is the size of a publication's audience. Advertisers want to run their advertisements in newspapers with potentially the largest audiences so that their advertisements will be viewed by as many customers as possible. The customary means by which newspaper publishers convey the size of their potential audiences to advertisers is by publicly disseminating the number of newspapers that they sell at or above a specified minimum price on weekdays and Sundays. Consequently, newspaper publishers and advertisers consider these "paid circulation" figures when negotiating advertising rates, and advertisers are more likely to pay publications that report higher paid circulation figures more money for their advertising space.

4. In 1914, in recognition of the importance of paid circulation figures to advertisers, the publishing industry established its first circulation auditing organization to verify publishers'

circulation claims (the “Circulation Bureau”). The Circulation Bureau is a voluntary, not-for-profit organization whose members include both advertisers and publishers. The purpose of the Circulation Bureau is to ensure the integrity and accuracy of the circulation figures reported by its member publishers through, among other means, standardized circulation reporting and circulation audits. Member publishers agree to compile and report their paid circulation figures in accordance with reporting rules adopted by the Circulation Bureau and to submit to circulation audits conducted by the Circulation Bureau’s audit staff. Between January 2002 and March 2004, all of Tribune’s principal newspapers were members of the Circulation Bureau and their paid circulation figures were audited annually by the Circulation Bureau. Further, during that period, the Circulation Bureau’s reporting rules, among other things, defined “paid circulation” generally to include newspapers that were sold for an amount equal to or greater than a specified minimum price.

5. Paid circulation is an important measure used to evaluate the business performance of publishing companies, which typically draw about 75% of their revenues from advertisers. Publishing industry analysts have observed in their reports and in conference calls that paid circulation is a metric used by publishers and advertisers to set advertising rates, and that there is a relationship between paid circulation and advertising revenues.

#### *Newsday and Hoy*

6. In June 2000, Tribune merged with the Times Mirror Company. In connection with the merger, Tribune acquired *Newsday* and *Hoy* and six other daily newspapers. *Newsday*, which has been published since 1940 and is Tribune’s third largest newspaper in terms of paid circulation, is distributed primarily on Long Island, New York and in parts of New York City. *Hoy*, a Spanish-language newspaper, has been published and distributed in New York City since 1998. In late 2003, Tribune embarked on a plan to distribute *Hoy* nationally by introducing the newspaper in Chicago. In early 2004, Tribune began distributing *Hoy* in Los Angeles.

7. From June 2000 to March 2004, *Newsday* operated as a subsidiary of Tribune, and *Hoy* operated as a division of *Newsday*. The newspapers had separate publishers, but shared many of the same personnel responsible for circulation. The publishers and most of the Directors and Vice Presidents of Circulation and other senior circulation personnel at *Newsday* and *Hoy* remained the same from the time that Tribune acquired the newspapers in June 2000 until June 2004. In February 2004, Tribune initiated an internal investigation into alleged circulation improprieties at *Newsday* and *Hoy*. As a consequence of the investigation, between June and September 2004, Tribune identified various schemes being used at *Newsday* and *Hoy* to inflate the newspapers’ paid circulation figures and forced the publishers at *Newsday* and *Hoy* to retire and terminated all of the circulation personnel at *Newsday* and *Hoy*, including the Directors and Vice Presidents of Circulation, associated with falsely inflating the newspapers’ paid circulation figures.

8. Between January 2002 and March 2004, Tribune generated approximately 73% of its operating revenues from its publishing business. *Newsday*, which included *Hoy*’s operations, accounted for approximately 15% of Tribune’s total publishing revenues. In 2002 and 2003, *Newsday*’s operating revenues (including *Hoy*) were \$609 million and \$622 million,

respectively. At least three quarters of *Newsday's* operating revenues (including *Hoy*) were attributable to advertising sales.

### **Newsday and Hoy's Inflated Paid Circulation Figures**

9. From at least January 2002 to March 2004, the publishers of *Newsday* and *Hoy* set ambitious circulation goals for their circulation management staff. In order to meet the goals set by the publishers, the Directors and Vice Presidents of Circulation and other circulation personnel (collectively the "Circulation Personnel") at *Newsday* and *Hoy* engaged in several schemes to generate fictitious sales and thereby inflate the newspapers' paid circulation figures. Although the schemes varied, they by and large fell into three categories. The first category involved circular and wash agreements with single copy dealers and home delivery agents that made it falsely appear as if the dealers and agents had purchased newspapers from *Newsday* and *Hoy* that they, in fact, did not buy. The second category involved newspapers that *Newsday* and *Hoy* claimed as paid circulation, but actually distributed for free or at prices that were less than the minimum price required to qualify the sales as paid circulation. The third category involved the practice of shifting returns.

10. During the relevant period, the Circulation Personnel at *Newsday* and *Hoy* entered into various sales arrangements with single copy dealers and home delivery agents for the sole purpose of generating fictitious sales in order to boost the newspapers' paid circulation figures. The arrangements varied from dealer-to-dealer and agent-to-agent, but generally operated in the same manner. Under these arrangements, the dealers and agents paid *Newsday* and *Hoy* for newspapers that were distributed to customers for free or, in some cases, were not distributed at all. *Newsday* and *Hoy*, in return, paid the dealers and agents incentive payments and fees for cartage and other purported services in amounts equal to or in excess of the cost of the newspapers. Although *Newsday* and *Hoy* did not earn monies from the sale of the newspapers under these arrangements, the structure of the agreements and payments made it falsely appear as if *Newsday* and *Hoy* had been paid for the newspapers and thus were recorded as paid circulation.

11. The Circulation Personnel at *Newsday* and *Hoy* also inflated the newspapers' paid circulation figures by claiming as paid circulation newspapers that were distributed for free or at prices that were less than the minimum price required to qualify the sales as paid circulation. These included newspapers that were distributed for up to ninety days to customers who did not order the newspapers and whose delivery was automatically suspended for nonpayment. It also included newspapers that were distributed to schools and colleges which were falsely represented as having been paid for by third-parties. Furthermore, it included newspapers distributed on days other than Sundays to customers who had paid only for the Sunday editions of *Newsday* and *Hoy*.

12. In addition to generating the fictitious sales described above, the Circulation Personnel at *Newsday* and *Hoy* engaged in the practice of "shifting returns" in order to inflate the publications' paid circulation figures. Each day, *Newsday* and *Hoy* calculated their single copy

sales by subtracting the number of newspapers that their single copy dealers returned to them unsold at the end of the day from the daily “draw.” The draw was the number of newspapers that *Newsday* and *Hoy* distributed in the morning to its dealers for sale. In order to boost sales figures on weekdays and Sundays, which were of principal interest to advertisers, *Newsday* and *Hoy* did not always recognize all of the newspapers that were returned to them unsold on weekdays and Sundays. Instead, they would “shift” the returns to less important days by recording the dealers’ returns on weekdays and Sundays against their draws on Saturdays, holidays and other special days that were excluded from the circulation analysis.

**Tribune’s Inaccurate Books and Records and Periodic Reports**

13. By fabricating sales and shifting returns, the Circulation Personnel at *Newsday* and *Hoy* were able to inflate the average paid circulation figures that they reported to Tribune, and which Tribune in turn reported to the public, for *Newsday* and *Hoy* for the six-months ended September 30, 2002, and for the six-months ended September 30, 2003, as follows:

	Reported Average Paid Circulation as of September 2002	Actual Average Paid Circulation as of September 2002	% of Over-Statement 2002	Reported Average Paid Circulation as of September 2003	Actual Average Paid Circulation as of September 2003	% of Over-Statement 2003
<i>Newsday</i> Daily	579,000	509,000	14%	580,000	455,000	27%
<i>Newsday</i> Sunday	677,000	595,000	14%	678,000	569,000	19%
<i>Hoy</i> Daily	78,000	52,000	50%	94,000	52,000	81%
<i>Hoy</i> Sunday	30,000	24,000	25%	35,000	27,000	30%

14. In order to fabricate the sales and shift the returns that allowed them to inflate *Newsday* and *Hoy*’s paid circulation figures as noted above, the Circulation Personnel at *Newsday* and *Hoy* entered into sham agreements and prepared or caused to be prepared false draw, return and billing records. The Circulation Personnel at *Newsday* and *Hoy* were successful in doing this because they had control over all aspects of the publications’ circulation processes, including, but not limited to, executing and reviewing dealer and agent agreements, establishing draws and recording returns, fixing rates and fees, determining the amounts to be paid to vendors and collecting amounts owed by vendors. Between January 2002 and March 2004, both *Newsday* and *Hoy* were members of the Circulation Bureau and their paid circulation figures were audited annually by the Circulation Bureau. Tribune, however, did not evaluate the Circulation Bureau’s audit procedures or separately verify its audit findings. In addition, Tribune lacked sufficient internal controls to detect the types of schemes that the Circulation Personnel at *Newsday* and *Hoy* employed to inflate the publications’ paid circulation figures. *Newsday* and *Hoy*’s inflated paid circulation figures therefore went undetected by Tribune during the relevant period.

15. As a result of the inflated circulation figures at *Newsday*, Tribune disseminated paid circulation numbers to the public in press releases, earnings conferences and other public statements that showed that *Newsday* was experiencing small, but steady growth in its paid circulation and that it was successfully competing against several other daily newspapers in its market. Tribune also disseminated paid circulation figures to the public that showed that *Hoy*’s paid circulation was growing substantially and at a rapid rate. Relying on the paid circulation

figures reported to it by *Hoy*, Tribune stated in earnings conferences, press releases and other public statements that *Hoy* was the largest Spanish-language newspaper in New York and that it had surpassed the circulation of a well-known, competing daily Spanish-language newspaper.

16. As a result of its failure to detect the schemes being used to inflate *Newsday* and *Hoy*'s paid circulation figures, Tribune reported inflated average paid circulation figures and circulation trends for these newspapers to the Commission and to the public in its Forms 10-K for the years ended December 29, 2002, and December 28, 2003. The company also reported erroneous circulation trends based on the inflated paid circulation figures for these newspapers in its Forms 10-Q for the first quarter ended March 31, 2002, through the first quarter ended March 28, 2004. In addition, in the same Forms 10-K and 10-Q, Tribune misstated its accounts payable and accounts receivable, as well as its circulation revenues and expenses as they related to *Newsday* and *Hoy*.

### **Tribune's \$90 Million Pretax Charge**

17. As part of its internal investigation, Tribune conducted circulation audits of all of its daily newspapers. The internal circulation audits revealed that *Newsday* and *Hoy* inflated their paid circulation figures as described above. As a result, in 2004, Tribune recorded pretax charges totaling \$90 million to settle anticipated claims by advertisers. Tribune recorded \$35 million in charges in the second quarter of 2004 and \$55 million in the third quarter of 2004. The charges reduced Tribune's income before taxes for those quarters by 18% and 21%, respectively. The internal circulation audits that Tribune conducted of its other daily newspapers did not uncover any material misstatements in their previously reported paid circulation figures.

### **Tribune's Violations of the Exchange Act**

18. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13, thereunder, require issuers that have securities registered pursuant to Section 12 of the Exchange Act to file annual and quarterly reports on Forms 10-K and 10-Q, respectively. Rule 12b-20 requires that the reports be complete and accurate.

19. Section 13(b)(2)(A) of the Exchange Act requires reporting companies under Section 12 of the Exchange Act to make and keep books, records and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets.

20. Section 13(b)(2)(B) of the Exchange Act requires reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that, among other things, transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets.

21. As a result of the conduct described above, Tribune violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, thereunder.

**Remedial Efforts and Cooperation by Tribune**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Tribune and the cooperation that Tribune afforded the Commission staff.

**IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Tribune's offer.

Accordingly, it is hereby ORDERED:

A. Pursuant to Section 21C of the Exchange Act, that Tribune cease and desist from committing or causing any violations and any future violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, thereunder.

By the Commission.

Nancy M. Morris  
Secretary