

November 20, 2007

SEC Issues Concept Release on Disclosure Relating to Business Activities in or with Countries Designated as State Sponsors of Terrorism

On November 16, 2007, the SEC issued a concept release seeking public comment about whether to develop mechanisms to facilitate greater access to companies' disclosures concerning their business activities in or with countries designated by the U.S. Department of State as State Sponsors of Terrorism (currently, Cuba, Iran, North Korea, Sudan and Syria).

Background

It should be noted that U.S. federal securities laws do not impose a specific disclosure requirement that addresses business activities in or with a country based upon its designation as a State Sponsor of Terrorism. Disclosure of business activities in or with a State Sponsor of Terrorism, however, would be required if it constitutes material information that is necessary to make a company's statements, in the light of the circumstances under which they are made, not misleading.

At the direction of Congress, the SEC established the Office of Global Security Risk in 2004 to review and monitor public company disclosure of material business activities in or with State Sponsors of Terrorism.

In June 2007, the SEC briefly added a feature to its web site that provided direct access to public companies' disclosures concerning past, current or anticipated business activities in or with one or more of the countries designated as State Sponsors of Terrorism. In response to significant concerns raised about the web tool, SEC Chairman Cox announced an indefinite suspension of this new web tool on July 20, 2007.

Concerns Raised about Prototype Web Tool

Through the concept release, the SEC is seeking public comment on how to improve public company disclosure of business activities in or with State Sponsors of Terrorism. Among other issues, we note that the SEC is seeking comments on the following:

- *Are there potential unintended consequences of providing easier access to company disclosure concerning business activities in or with State Sponsors of Terrorism?* The SEC noted that one of the concerns raised about the prototype web tool was the possible negative connotation that could attach to a company when it is named on the

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SEC web site. The prototype web tool was designed to avoid any indication that a conclusion had been reached about or any advice provided regarding the propriety of a company's activities. As a result, the web site presented disclosure of business activities regardless of their materiality, nature or legality, even if the disclosure concerned benign activities such as news reporting within a State Sponsor of Terrorism, activities licensed by a U.S. government agency (e.g., international telecommunications activities) or immaterial activities that the company voluntarily disclosed.

- *How frequently should the SEC update the database of documents containing the relevant disclosure?* The SEC noted that serious concerns about the prototype web tool were raised with respect to the lack of updated information beyond what a company had included in its most recent annual report. More recent disclosure could be material to a complete understanding of the disclosure in the last annual report.
- *Would providing easier access to companies' disclosures concerning their business in or with State Sponsors of Terrorism (1) disproportionately impact U.S. or foreign issuers or (2) impact the competitiveness of U.S. financial markets?*
- *Should the SEC use a different standard of materiality when reviewing disclosures related to business activities in or with State Sponsors of Terrorism?*

Use of XBRL Data Tags

In the concept release, the SEC has suggested the potential use of data tags – computer labels written in XBRL computer language – to enhance the disclosure about business activities in or with State Sponsors of Terrorism. The SEC would prepare or oversee the preparation of a simple taxonomy of XBRL data tags that companies could apply to various kinds of disclosure that they make with respect to business activities in or with State Sponsors of Terrorism. The SEC believes the use of data tags might allow reporting companies to:

- Indicate the level of materiality by using the data tags to determine how the disclosure would be called up in the SEC web site.
- Address the timeliness of information the web tool displays by using data tags to display information the moment the information is electronically filed with the SEC.

The SEC is seeking comment on whether reporting companies' use of interactive data tags in the XBRL language would provide investors with easier access to public companies' disclosure about business activities in or with State Sponsors of Terrorism.

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The SEC is also interested in receiving comments on any other issues that are related to the SEC's consideration of providing improved investor access to disclosures concerning public companies' business activities in or with State Sponsors of Terrorism.

Comments are due 60 days after publication of the SEC's concept release in the *Federal Register*, which due date is expected to be in late January 2008.

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This memorandum is not intended to provide legal advice with respect to any particular situation, and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to:

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