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Concept Release on Mechanisms To Access Disclosures Relating to Business Activities in or With Countries Designated as State Sponsors of Terrorism; Concept Release; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230, 239, 240 and 249

[Release Nos. 33–8860; 34–56803; File No. S7–27–07]

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Concept Release on Mechanisms To Access Disclosures Relating to Business Activities in or With Countries Designated as State Sponsors of Terrorism

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Securities and Exchange Commission is soliciting comment about whether to develop mechanisms to facilitate greater access to companies' disclosures concerning their business activities in or with countries designated as State Sponsors of Terrorism.

DATES: Comments should be received on or before January 22, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/concept.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–27–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–27–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/concept.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: James Lopez, Division of Corporation Finance at (202) 551–3536; U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of State publishes a list of countries that the Secretary of State has designated as State Sponsors of Terrorism.[1] The five countries the U.S. Secretary of State currently designates as State Sponsors of Terrorism are Cuba, Iran, North Korea, Sudan and Syria. Over the last several years, a large number of state governments, universities, pension funds, and other institutional investors, as well as individual investors, have sought information relating to public company business activities in or with State Sponsors of Terrorism in furtherance of their desire to ensure that their invested funds do not directly or indirectly support terrorism.[2]

The Commission's Office of Global Security Risk routinely monitors public company disclosure of material business activities in or with State Sponsors of Terrorism. On June 25, 2007, the Commission added a feature to its Web site that provided direct access to public companies' 2006 annual report disclosures concerning past, current or anticipated business activities in or with one or more of these countries.[3] The sole purpose of the Web site feature was to provide direct access to company disclosures on this topic.

The web feature was constructed as a tool to assist investors seeking to view companies' disclosures regarding business activities in or with any of the five State Department-designated State Sponsors of Terrorism. It was not based on a simple keyword search of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The web tool was the result of a staff review of company disclosure including any reference to a State Sponsor of Terrorism. This disclosure review allowed the web tool to exclude disclosure unrelated to a company's activities in or with any of these countries (*e.g.*, generic references to a country; references to a State Sponsor of Terrorism in the context of an executive officer's or director's experience and educational background; or generic descriptions of risk associated with the possibility of war).[4] It also permitted the web tool to exclude companies whose disclosures stated that they did not conduct business in or with State Sponsors of Terrorism. The Commission's staff did not apply any other filter in screening disclosure content. In order to provide proper context, all of the company disclosures available through the web tool were linked directly to the full text of the company's annual report. Our Web site analytics indicated that visitors typically clicked through a company name to the text of a company's own disclosure. Moreover, the SEC provided no commentary on the company's own disclosures except to state that the existence of a disclosure by a company concerning activities in one of the State Sponsors of Terrorism does not, in itself, mean that the company directly or indirectly supports terrorism or is otherwise engaged in any improper activity.

The construction and operation of the web tool generated many comments, both positive and negative, based on exceptionally high traffic. A number of the negative comments raised serious concerns about the lack of updated information beyond what a company had included in its most recent annual report. Other concerns included the possible negative connotation that could attach to a company when its disclosure was presented, even though the company's disclosure concerned benign activities such as news reporting within a State Sponsor of Terrorism or immaterial activities that the company voluntarily disclosed. The comments received have been extremely useful to the Commission in evaluating the performance and appropriateness of the web tool.

Because of the importance the SEC places on complete, accurate, and timely disclosure, comments about the web tool's inability to access more current information about a company's business activities in or with a State

[1] State sponsors of terrorism are designated under three laws: Export Administration Act of 1979, 50 U.S.C. App. § 2405(j) (2000), Arms Export Control Act, 22 U.S.C. 2780(d) (2000), and Foreign Assistance Act of 1961, 22 U.S.C. 2371(a) (2000).

[2] *See, e.g.*, Letter from 50 trustees of state treasurers to the State Department, Commerce Department, Treasury Department and Securities and Exchange Commission (June 3, 2005), available at *http://www.cii.org/site_files/pdfs/letters/Joint%20Ltr%2050%20pf%20to%20US%20govt%2006-03-05.pdf.*

[3] Press Release, SEC Adds Software Tool for Investors Seeking Information on Companies' Activities in Countries Known to Sponsor Terrorism (June 20, 2007).

[4] For example, the web posting excluded generic references to hostilities or discord between North Korea and South Korea.

Sponsor of Terrorism since the date of the company's most recent annual report were of particular concern to the agency. Because more recent disclosure might include, for example, the fact that a company had completely terminated its activities in a country, the more recent information could be material to a complete understanding of the disclosure in the last annual report. We also question whether a company's disclosure of legitimate or immaterial business activity should lead to its being identified through a web tool that highlights connections to State Sponsors of Terrorism.

To address these and related concerns, on July 20, 2007, the web tool was indefinitely suspended. The July 20, 2007 suspension announcement indicated that the Commission staff would consider whether to recommend a Concept Release on the question of how best to make public company disclosure of business activities in or with a State Sponsor of Terrorism more accessible.[5] The Commission is issuing this Concept Release as a result of that process, in order to solicit public comment on these important issues in a more formal way. Engaging the public's input on these issues is particularly appropriate to the extent that we contemplate novel approaches to investor access to company disclosures. The Commission hopes that this process will afford the best opportunity to address all legitimate concerns.

II. Disclosure of Business Activities in or With Countries Designated as State Sponsors of Terrorism

The 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. However, the federal securities laws do require disclosure of business activities in or with a State Sponsor of Terrorism if this 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.[6] The term ''material'' is not defined in the federal securities laws. Rather, the Supreme Court has determined information to be material if there is a substantial likelihood that a reasonable investor would consider the information important in making an investment decision or if the information would significantly alter the total mix of available information.[7]

The materiality standard applicable to a company's activities in or with State Sponsors of Terrorism is the same materiality standard applicable to all other corporate activities. Any such material information not covered by a specific rule or regulation must be disclosed if necessary to make the required statements, in the light of the circumstances under which they are made, not misleading. The materiality standard's extensive regulatory and judicial history helps companies and their counsel to interpret and apply it consistently, and we remain committed to employing this standard to company disclosure regarding business activities in or with State Sponsors of Terrorism.

Although the Commission is well positioned to review disclosure relating to business activities regardless of the country in which they are conducted, we do not have the expertise or information necessary to identify the particular countries whose governments have funded, sponsored, provided a safe haven for, or otherwise supported terrorism. Nor is it the Commission's role to determine the degree to which a public company's business activities may support terrorism or may be inconsistent with U.S. foreign policy or U.S. national interests.

Information that companies provide regarding their business activities in or with State Sponsors of Terrorism is currently available in various public filings they make with the Commission. Searching for and comparing such disclosure can be difficult and time consuming using the EDGAR system, although we have recently made it easier by adding an advanced full-text search function.[8] The Commission seeks public comment on whether easier access to this information is appropriate.

Request for Comment

1. The Commission does not provide enhanced access to disclosures concerning other specific subject areas. Should we do so in this case? Why or why not?

2. Would providing easier access to companies' disclosures of business in or with State Sponsors of Terrorism place appropriate emphasis on that issue or would it place undue emphasis? Would providing for easier access to such disclosures be consistent with the Commission's mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation?

3. Regardless of the particular approach that the Commission might pursue to provide investors with easier access to companies' disclosures concerning their business in or with State Sponsors of Terrorism, are there potential unintended consequences of providing easier access to company disclosures in this area that the Commission should consider? If so, what are they? Are there steps the Commission could take to minimize them?

4. Would providing easier investor access to companies' disclosures concerning their business in or with State Sponsors of Terrorism disproportionately impact U.S. or foreign private issuers? If so, how?

5. Would providing easier investor access to U.S. listed companies' disclosures concerning their business in or with State Sponsors of Terrorism positively or negatively impact the competitiveness of U.S. financial markets?

6. The Commission's staff, when reviewing disclosure related to business activities in or with a State Sponsor of Terrorism, interprets materiality in the same way it does when reviewing disclosure relating to any other corporate activities not covered by a specific rule or regulation. We nevertheless seek comment raising any opposing views and alternatives. Commenters should discuss in detail the bases for their views and recommendations.

7. Is the information currently available in public company filings regarding business activities in or with State Sponsors of Terrorism sufficient?

8. Do investors find the information that public companies currently disclose about their business activities in or with State Sponsors of Terrorism important in making investment decisions?

III. Means of Providing Easier Access to Existing Company Disclosures

In seeking public comment on whether providing easier access to such disclosure is appropriate, the Commission seeks additional comment

[5] Press Release, Statement by Securities and Exchange Commission Chairman Christopher Cox Concerning Companies' Activities in Countries Known to Sponsor Terrorism (July 20, 2007).

[6] Rule 408 of Regulation C, [17 CFR 230.408] and Rule 12b–20 under the Securities Exchange Act of 1934 [17 CFR 240.12b–20].

[7] *TSC Industries* v. *Northway, Inc.,* 426 U.S. 438 (1976). It has also held that materiality of contingent or speculative events or information depends on balancing the probability that the event will occur and the expected magnitude of the event. *Basic* v. *Levinson,* 485 U.S. 224, 238 (1988).

[8] By accessing EDGAR, the page titled ''EDGAR Full-Text Search,'' and clicking on ''Advanced Search,'' the user can search for, among other terms, the names of the countries designated as State Sponsors of Terrorism, and limit the results to certain filings and documents, such as annual reports (e.g., Form 10–K or 20–F) or company correspondence (''CORRESP'') with the Commission's staff.

on whether it should pursue one of the following alternative means to accomplish this end.

Improvements to the Web Tool

The web tool we discuss in Section I, and previously available on the Investor Information section of the SEC Web site, contained the names of companies that disclosed in their 2006 annual reports business activities in or with one or more of the five State Sponsors of Terrorism. After accessing the web tool and clicking on one of the five countries, an investor could click on the name of a company that appeared under the country name to view the relevant portion of its 2006 annual report. The disclosure page included a link to the company's entire 2006 annual report as well as all of its other filings, including those it filed after its annual report. As discussed above, company disclosure referencing a State Sponsor of Terrorism that was unrelated to business activities was not available through the web tool.[9] However, company disclosure indicating that the company was in the process of terminating business activities in or with one of the countries was made available through the web tool. Similarly, company disclosure of business activities regardless of their materiality, nature, or legality was made available through the web tool. The inclusion of company disclosure regardless of the amount or nature of business activities in or with a State Sponsor of Terrorism 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. Instead, the tool was designed to provide easier access to information that would allow an investor to come to his or her own conclusion regarding a company's business activities in or with State Sponsors of Terrorism. This approach raised concerns, however. Companies named on the SEC's Web site maintained that inclusion of a company's disclosure via the web tool, regardless of the appropriateness of the activity, created a negative impression and might cause them reputational harm.

The Commission seeks public comment on whether it should reinstate a web tool and, if so, how to address the shortcomings that were present in the prototype. Some have suggested that, at a minimum, the following issues would need to be addressed: broadening the universe of available disclosure documents; including a company's most recent filings to ensure that the Web site information is timely; and displaying the methodology used to select the companies for the Web site and the frequency of updates, including a description of the limitations on the information such as the fact that a company might disclose more than is required under the securities laws. Of the above list, the most difficult recommendation to implement would be the requirement that Commission staff constantly update the universe of current and periodic report and other filing disclosure available through the web tool, in order to keep the information timely. Doing this would require a significant and indefinite commitment of agency personnel, with concomitant impacts on the SEC budget and on the other work of the Commission, particularly within the Division of Corporation Finance. The recommendations listed above may not address all of the concerns that the web tool raised.

Request for Comment

9. Do the recommendations listed above adequately address the concerns with the prototype web tool? What specific improvements could be made to address those concerns? Are there additional concerns that need to be addressed?

10. Should the Commission reinstitute the web tool, with improvements? If so, what specific improvements should we make to the web tool before we once again make it publicly available?

11. If the Commission were to reinstitute the web tool, how frequently should it update the database of documents containing relevant disclosure?

12. Could the implementation of a web-based tool have adverse consequences, such as reducing the amount of information, not otherwise subject to disclosure under the federal securities laws, which a company chooses to make available to investors?

13. Is the concept of a web tool that begins with a Commission-generated list of companies inherently flawed?

Data Tagging by Companies Themselves

Since 2004, the Commission has devoted increasing attention and resources to the possibility of making periodic reports companies file with the Commission, including financial statements, interactive. Through the use of data tags—computer labels written in the XBRL computer language—users of company disclosure documents could more easily search, retrieve, and analyze information. For nearly two years, the Commission has had a pilot program underway in which companies voluntarily tag their financial statement information using XBRL labels. Over 40 companies, with a market capitalization of over $2 trillion, now participate in the program. At the same time, the Commission is currently developing web-based tools that take advantage of the power of interactive data technology. One such tool, which we expect to make available soon, will let investors compare executive compensation across 500 of the nation's largest public companies.

One means of enhancing the searchability and comparability of company disclosures concerning business activities in State Sponsors of Terrorism would be for a company to apply data tags to identify the nature of the disclosure. The Commission seeks public comment on whether it should consider the use of data tagging to enhance access to public company information about business activities in or with the State Sponsors of Terrorism.

When the Commission released a web tool on June 25, 2007 that provided direct access to public companies' disclosures about their business activities in or with the State Sponsors of Terrorism, we stated that ''[t]he existence of a disclosure by a company concerning activities in one of the listed countries does not, in itself, mean that the company directly or indirectly supports terrorism or is otherwise engaged in any improper activity.'' [10] Nonetheless, several of the companies whose disclosures were identified in the web tool stated that the information in their annual reports was not indicative of their doing business in a State Sponsor of Terrorism, or alternatively that it was not indicative of their doing a material amount of business in such a country, or that it did not concern the kinds of business activities with which investors normally would be concerned. The common theme to these various comments was, in other words, that company disclosures had been mislabeled. One way to directly address this concern would be to authorize the companies themselves to use data tags that would determine how their disclosures would be called up in response to web-based searches.

Were this approach to be adopted, a further potential benefit would be to eliminate any Commission role in characterizing a company's disclosure

[9] As such, companies were excluded if the disclosure stated that the company did not do business in or with the particular country.

[10] Press Release, SEC Adds Software Tool for Investors Seeking Information on Companies' Activities in Countries Known to Sponsor Terrorism (June 20, 2007).

with a web tool. Because companies would apply the tags themselves to their own disclosures, the information that a web search tool would highlight for investor scrutiny would be determined not by the Commission but by each company.

The use of company data tagging also has the potential to address concerns about the timeliness of information the web tool displays. Rather than relying upon a company's most recent annual report, the web tool would rely on data tags attached to any company filing, including, for example, current reports on Form 8–K. As a result, the web tool would display information to any user the moment it was electronically filed with the Commission.

Finally, the use of company data tagging would substantially reduce the necessity to dedicate significant Commission staff resources on an ongoing basis, since the companies, not the Commission staff, would determine what disclosures the web tool would display.

In order for the Commission to adopt this approach, it would first be necessary to prepare a simple taxonomy of XBRL data tags which companies could apply to the various kinds of disclosure that they make with respect to business activities in or with State Sponsors of Terrorism. A recent example of how this might be done is the specialized taxonomy that was prepared for mutual fund performance data by the Investment Company Institute, and that is currently being reviewed by XBRL US, the independent private sector standard setter for interactive data tags. Once the taxonomy was completed, the data tags would then be published on the web and made available, free of charge, to every public company. The Commission seeks public comment on whether it should seek to provide investors easier access to public companies' disclosure about business activities in or with State Sponsors of Terrorism through the use of interactive data tags in the XBRL language that companies would apply themselves.

Request for Comment

14. Should the Commission consider proposing a requirement that companies use XBRL data tags to identify various types of disclosure regarding business activities in or with State Sponsors of Terrorism? Alternatively, should the use of XBRL data tags be voluntary?

15. If the Commission were to pursue data tagging, who should define the various categories of disclosure?

16. If the Commission were to pursue data tagging, to which categories of disclosure should the data tags correspond? For example, should there be a category for business activities that the company considers immaterial to its business, but which it chooses to disclose voluntarily? Or for business activities in State Sponsors of Terrorism that are perceived as benign, such as news gathering or humanitarian work? Should there be a category for business activity that has ceased? Or for disclosure that no business activities with any State Sponsor of Terrorism have ever existed? What other categorization would be necessary to promote clarity and ease of use?

17. If the Commission were to pursue data tagging, what types of information should it require companies to tag? For example, should a company be required to tag only that disclosure which relates to ongoing business activities in or with a State Sponsor of Terrorism? Should it also tag data relating to disclosure of business activities that ceased during the period of the report, or during a certain time period prior to that?

18. If the Commission were to pursue data tagging, which reports and filings with the SEC should include this tagged disclosure?

19. Should the Commission consider options other than data tagging or a web tool? If so, what?

IV. General Request for Comments

In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address that are related to the Commission's consideration of providing improved investor access to disclosures concerning public companies' business activities in or with State Sponsors of Terrorism. We are also interested in any issues that commenters may wish to address relating to the relative benefits and costs of providing improved access to public company disclosures in this area. Please be as specific as possible in your discussion and analysis of any additional issues. Where possible, please provide empirical data or observations to support or illustrate your comments.

By the Commission.

Dated: November 16, 2007.

Nancy M. Morris,

Secretary.

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