

MEMO# 21968

November 23, 2007

SEC Seeks Comment On Requiring Disclosure Of Business Activities In Countries Sponsoring Terrorism; Call to Be Held Dec. 18th

[21968]

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TO: SEC RULES COMMITTEE No. 89-07
EQUITY MARKETS ADVISORY COMMITTEE No. 61-07
INTERNATIONAL COMMITTEE No. 29-07 RE: SEC SEEKS COMMENT ON REQUIRING
DISCLOSURE OF BUSINESS ACTIVITIES IN COUNTRIES SPONSORING TERRORISM; CALL TO
BE HELD DEC. 18TH

As we previously informed you, in June 2007, the SEC announced a tool on its website that was intended to provide the public access to disclosure in company filings regarding the company's business interests in countries the U.S. Secretary of State has designated as "State Sponsors of Terrorism" (i.e., Cuba, Iran, North Korea, Sudan, and Syria). [\[1\]](#) The following month, the tool was temporarily suspended due to concerns being raised about the currentness of its information. [\[2\]](#) At the time the SEC announced the suspension, Chairman Cox noted that the Commission's staff was considering whether to recommend that the Commission issue a Concept Release regarding how to make more accessible a public company's disclosure of activities in terrorist states. The staff subsequently recommended issuance of a Concept Release, which was published this month and is briefly summarized below. [\[3\]](#)

Comments on the proposal will be due sixty days after its publication in the Federal Register. The Institute will hold a conference call on Tuesday, December 18th at 4:00 p.m. EST to discuss filing a comment letter on the proposal. If you plan to participate on the call,

please let Lynnette Smith know by email as soon as possible, but no later than Friday, December 14th. Upon contacting Ms. Smith, she will provide you the call-in details. If you are unable to participate in the call but have comments on the proposal, please provide them to Tami Salmon prior to the call by phone (202-326-5825) or email (tamara@ici.org).

According to the Release, while the federal securities laws do not impose a specific disclosure requirement that addresses business activities in or with a country on the Secretary of State's list, such information must be disclosed if such business activities constitute material information that would be required disclosure under the antifraud provisions of the federal securities laws. [\[4\]](#)

The Release then notes that information relating to a company's business activities in or with State Sponsors of Terrorism is currently available in various public filings the company makes with the Commission. While searching for and comparing such disclosures using the SEC's EDGAR system can be difficult and time consuming, the SEC has recently made this process easier by adding an advanced full-text search function. Against this backdrop, the Commission's Release seeks public comment on whether easier access to a company's business activities in or with State Sponsors of Terrorism is appropriate. More particularly, the Release seeks input on the following issues, among others:

- Should the Commission provide enhanced access to disclosures concerning business activities in or with State Sponsors of Terrorism when it does not provide enhanced disclosures concerning other subject areas? Why or why not?
- Are there potential unintended consequences of providing easier access to such disclosures?
- Do investors find such disclosures to be important information in making their investment decisions?
- 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?
- Is the information currently available in public company filings regarding business activities in or with State Sponsors of Terrorism sufficient?

The Release also seeks comment on two possible alternatives to providing such disclosure, as well as whether there are other ways to provide disclosure that the Commission should consider. The two alternatives identified are: improvements to the web-based tool that is currently suspended and data tagging.

Improvements to the Web-Based Tool

As discussed above, this tool remains temporarily suspended as a result of concerns with its

information. According to the Release, some have suggested that, if the Commission were to reinstate the tool, it would need to address: broadening the universe of available disclosure documents; including a company's most recent filings to ensure the information is timely; and displaying the methodology used to select the companies for the website and the frequency of updates, including a description of the limitations on the information (e.g., a company might disclose more than is required under the securities laws). The Release notes, however, that these recommendations "may not address all of the concerns that the web tool raised." Moreover, if the Commission staff were charged with constantly updating the universe of disclosure available through the web tool in order to keep the information timely, this "would require a significant and indefinite commitment of agency personnel, with concomitant impacts on the SEC budget and other work of the Commission, particularly within the Division of Corporation Finance." The Release seeks comments on the following:

- Is the concept of a web tool that begins with a Commission-generated list of companies inherently flawed?
- Should the tool be reinstated?
- If reinstated, would addressing the issues listed above adequately address concerns with the tool as it was originally deployed?
- How frequently should the Commission update the database of documents containing relevant disclosure?

Data Tagging by Companies Themselves

The second alternative on which the Release seeks comment relates to data tagging. In particular, the Release seeks comment on whether the Commission should consider the use of data tagging (e.g., XBRL) to enhance access to public company information about business activities with the State Sponsors of Terrorism. According to the Release, this approach would directly address concerns with the flaws in the previous tool, respond to concerns with the timeliness of information, and substantially reduce the necessity to dedicate significant Commission staff resources on an ongoing basis to populating and maintaining the tool. Should the Commission pursue this approach, it seeks comment on who should define the various categories of required disclosure to be tagged (e.g., material business interests versus all business interests) and the categories of disclosure to which the data tags should correspond (e.g., immaterial business activities, humanitarian work, ceased business activities). The Commission also seeks comment on which reports and filings submitted to the SEC should be tagged.

Finally, the Release expresses the Commission's interest in commenters' views regarding the relative benefits and costs of providing improved access to public company disclosures in this area.

endnotes

[1] See Institute [Memorandum](#) to International Members No. 17-07, Equity Markets Members No. 34-07, SEC Rules Members No. 71-07 [No. 21308], dated June 27, 2007.

[2] See Institute [Memorandum](#) to International Committee No. 20-07, Equity Markets Advisory Committee No. 40-07, and SEC Rules Members No. 92-07 [No. 21393], dated July 25, 2007.

[3] See Concept Release on Mechanisms to Access Disclosures Relating to Business Activities in or with Countries Designated as State Sponsors of Terrorism, SEC Release Nos. 33-8860, 34-56803 (Nov. 16, 2007) (the “Release”).

[4] Though the term “material” is not defined for purposes of these provisions, the Release notes that the U.S. Supreme Court “has determined information to be material if there is a substantial likelihood that a reasonable investor would consider the information important to making an investment decision or if the information would significantly alter the total mix of available information.”