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August 5, 2008

Via email: rule-comments@sec.gov

Ms. Florence E. Harmon,
Acting Secretary,
Securities and Exchange Commission,
100 F Street, N.E.,
Washington, DC 20549-1090.

Re: Interactive Data To Improve Financial Reporting - File No. S7-11-08

Dear Ms. Harmon:

This letter is in response to Release No. 33-8924; 34-57896; 39-2455; IC-28293 (the "Proposing Release"), in which the Commission solicits comments on its proposal to require companies to provide financial statement information in interactive data format using the eXtensible Business Reporting Language ("XBRL").

We support the Commission's efforts to achieve greater transparency in financial reporting and disclosures through the use of interactive data format. However, we believe that the Commission's proposed liability provisions with respect to XBRL financial statements need to be clarified in certain respects. Also, we believe that foreign private issuers that are subject to the reporting obligations under the Securities Exchange Act of 1934 (the "Exchange Act"), and that file with the Commission financial statements prepared in accordance with generally accepted accounting principles as used in the United States ("U.S. GAAP"), should be given the same slower phase-in as foreign private issuers using International Financial Reporting Standards ("IFRS"), rather than being required to follow the schedule for domestic filers. We have set forth our comments on these aspects of the proposals below.

## I. Liability

The liability consequences of filing the XBRL financial statements contemplated by the new rules should flow from the purpose and nature of those new statements. In our view, the XBRL statements are best understood as merely a supplemental repetition, in a potentially useful format, of substantive information already required to be including in the relevant filings. We also perceive little risk that registrants would affirmatively try to introduce differences between their XBRL statements and the underlying financial statements, since any such differences would be completely transparent. Given that perspective, we suggest that the Commission's proposed liability provisions be clarified in the manner set forth below.

### A. Human-readable XBRL financial statements

We believe the substance of the liability provisions should be that (a) if the underlying financial statements (*i.e.*, the traditional-format financial statements in the official filing) contain no errors, an issuer incurs no incremental securities law liability for errors in the XBRL financial statements (by which we mean both the XBRL machine-readable interactive data file and the human-readable text produced by the Commission's software using that data file), (b) if the underlying financial statements contain material errors, but the XBRL financial statements faithfully track them (*i.e.*, introduce no additional material errors), the issuer is subject to the same potential securities law liability whether an investor has viewed the underlying financial statements or XBRL financial statements and (c) if the underlying financial statements contain material errors and the XBRL financial statements introduce additional errors, the issuer is subject to potential securities law liability on the erroneous underlying financial statements and any material errors carried over to the human-readable XBRL financial statements, but is not liable for the additional errors in the XBRL financial statements.

We believe that, in particular, the conclusion in clause (c) above should be clarified in the final rules. The definition of the human-readable XBRL financial statements (*i.e.*, "Interactive Data in Viewable Form") is limited to human-readable XBRL financial statements that display identically in all material respects to the underlying financial statements. The rules are silent about the liability status of human-readable XBRL financial statements that differ materially from the underlying financial statements – in other words, the rules are silent on the situation in clause (c) above.

We believe that avoidance of private securities liability should not be predicated on a showing of good faith in the preparation of XBRL financial statements. The SEC may bring enforcement action against any issuer it believes has not complied with Rule 405. If a good faith requirement were introduced for issuers, that would likely

become a focus of private securities litigation, which is a costly process. We respectfully urge the Commission not to include such a requirement.

The simplest way to implement this approach would be to (1) revise the definition of "Interactive Data in Viewable Form" to delete the requirement that the display be materially identical to the underlying financial statements and (2) revise Rule 406(b) to state that the principles in clauses (a), (b) and (c) in the first paragraph above should be applied to the human-readable XBRL financial statements.

Also, a provision should be added that no liability shall be premised on any errors introduced by the Commission's viewing software.

**B. Machine-readable XBRL financial statements**

As another example where the liability rules are unclear, the statements in Rule 406 about Securities Act liability are confusing. Rule 406(b) states that the "Interactive Data in Viewable Form" are subject to liability under, among other things, the Securities Act. In contrast, Rule 406(c)(3)(A) states that the "Interactive Data File" is not part of the registration statement or prospectus for purposes of liability under Section 11 and 12 of the Securities Act, and is not subject to liability under those sections. Finally, and seemingly inconsistent with the previous sentence, Rule 406(c)(3)(C) states that the "Interactive Data File" is subject to Securities Act liability for substantive content of the financial and other disclosure to the same extent as the underlying financial statements is the related official filing.

Our recommendation is to state in the rules that no liability shall be premised on the interactive data file itself. That would be implemented by revising Rule 406(c)(2) to read "(2) is not subject to liability under any provision of the Securities Act, Exchange Act or Investment Company Act or the rules and regulations thereunder" and by deleting clause (C) of Rule 406(c)(3).

**II. Private Issuers That Use U.S. GAAP**

Under the proposed rules, foreign private issuers that use U.S. GAAP would be treated in the same manner as domestic registrants in terms of phase-in. For these foreign private issuers with a worldwide public common equity float above $5 billion as of the end of their most recently completed second fiscal quarter, the proposed rules would not allow any grace period for compliance. Thus, under the current proposed rules, these foreign private issuers would be put at a disadvantage, which could be substantial, in terms of costs and resource allocations that would be necessary to comply with the XBRL financial statement requirements, as compared with foreign private issuers that use IFRS as issued by the International Accounting Standards Board

("IASB") (as to which the XBRL financial statement requirements would not apply until year three of the phase-in period), or local generally accepted accounting principles with reconciliation to U.S. GAAP or IFRS other than as issued by the IASB (as to which the requirements would not apply at all).

For example, in Japan, there are currently 26 Japanese issuers that are subject to periodic reporting obligations under the Exchange Act. All of them file with the Commission financial statements prepared in accordance with U.S. GAAP. According to publicly available information, most of them are expected to be "large accelerated filers" (as defined in Rule 12b-2 under the Exchange Act) with a worldwide public common equity float above $5 billion as of the end of their most recently completed second fiscal quarter if, as currently proposed, the XBRL financial statement requirements start to apply beginning with fiscal periods ending on or after December 15, 2008.[1] Under the proposed rules, these Japanese issuers would be included in year one of the phase-in period, along with the largest 500 domestic registrants. These Japanese issuers chose U.S. GAAP to prepare their financial statements for Exchange Act reporting purposes for various reasons over the years. For some of them, the choice was made several decades ago. They did not foresee that, with the introduction of interactive data format in the financial reporting regime under the Exchange Act, they would be grouped together with the largest U.S. registrants with no grace period for compliance, which the Commission has traditionally granted to foreign private issuers in many other contexts.

Accordingly, we believe that foreign private issuers that use U.S. GAAP (regardless of the size of their worldwide public common equity float) should be given the same delayed phase-in as foreign private issuers that use IFRS as issued by the IASB (*i.e.*, year three of the phase-in period).

* * *

[1] Most of these Japanese companies have fiscal years that end on March 31 and if the XBRL financial statement requirement starts applying as currently proposed, will need to determine their worldwide public common equity float as of September 30, 2008. The remaining few Japanese issuers have a calendar fiscal year and must make the determination as of June 30, 2008.

We appreciate this opportunity to comment on the Proposing Release. You may direct any questions with respect to this letter to John T. Bostelman (212-558-3840) or Robert E. Buckholz, Jr. (212-558-3876) in our New York office.

Very truly yours,

Sullivan & Cromwell LLP

cc: Brian Cartwright (General Counsel)
John W. White (Director, Division of Corporation Finance)
Paul M. Dudek (Chief, Office of International Corporate Finance, Division of Corporation Finance)
Ethiopis Tafara (Director, Office of International Affairs)