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

Re: File S7-11-08
Release Nos. 33-8924, 34-57896
Interactive Data to Improve Financial Reporting

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Federal Regulation of Securities and the Committee on Law and Accounting (the "Committees" or "We") of the Section of Business Law of the American Bar Association in response to the request for comments by the Securities and Exchange Commission (the "Commission") in its May 30, 2008 proposing release referenced above (the "Proposing Release").

The comments expressed in this letter represent the views of the Committees only and have not been approved by the American Bar Association's House of Delegates or Board of Governors and therefore do not represent the official position of the American Bar Association (the "ABA"). In addition, this letter does not represent the official position of the ABA Section of Business Law, nor does it necessarily reflect the views of all members of the Committees.

We support the proposal to require companies to provide financial statements to the Commission and on corporate websites in interactive data format using the eXtensible Business Reporting Language (XBRL). In general, we believe the proposal will lead to more efficient financial information for financial statement users. We do have some concerns and recommendations about the proposal and provide them below.

Interactive Data Tag Requirements

The Commission should not initially require detail tagging of financial statement footnotes and schedules in a filer's second year of compliance with the Proposed Release. Instead, the Commission should assess the experience and revisit the proposed requirement.

As proposed, during the first year in which a company is required to provide interactive data, it will be required to tag footnotes separately, in accordance with the taxonomy of XBRL tags provided by the EDGAR Filing Manual. In this first year, each complete footnote included in the filer's financial statements and financial statement schedule will be block tagged in its entirety. In the second and subsequent years, the filer would be required under the Proposing Release to detail tag footnote information and financial statement schedules. Specifically, after the first year, a filer would be required to tag separately: (a) each significant accounting policy identified within the footnote on significant accounting policies; (b) each table within a footnote; and (c) within each footnote, amounts and related narrative disclosures.

We believe that the Commission should not initially require detail tagging of footnote information and financial statement schedules in a filer's second year of compliance. For the reasons set forth below, we are concerned that the complexity of complying with this proposed requirement may be significant and the burden of complying may be excessive in relation to the benefit. We believe that it would be better to have the opportunity to first assess the experience with and benefits from the presentation of interactive data, including the other levels of footnote tagging, before the Commission considers mandating detailed tagging of footnote information and financial statement schedules.

The experience of a large group of companies with separately tagging each significant accounting policy and each table included in a footnote, as well as tagging each amount and required disclosure in financial statement schedules, should inform the utility and development of any more detailed footnote tagging requirement. Filers should also have the opportunity to provide the most detailed level of footnote tagging voluntarily, on a basis comparable to that on which interactive data may be provided under the Commission's current voluntary XBRL program. This will provide an additional experiential basis with respect to this level of tagging.

Our concern with the detailed tagging requirement is founded on the wide variety of information that may be included in financial statement footnotes and the potential difficulty in categorizing this information in accordance with the taxonomy of XBRL tags provided by the EDGAR Filing Manual. The information that a company may include in the footnotes to its financial statements is likely to be far more varied and specific to the company's particular circumstances than the categories of information generally included in the body of financial statements by generally accepted accounting principles in the

United States ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). This variety and the situation-specific nature of the information is likely to increase the number of instances in which the definition, label and other attributes of the standard tags included in the EDGAR Filing Manual will not apply to information that would be covered by the most detailed level of footnote tagging. In such circumstances, the company would need to develop and identify a special element for use in tagging such information. Not only would the development by companies of such special elements involve additional time and expense, the use of such special elements is likely to reflect a lack of comparability between companies of the information so tagged, reducing the benefits intended to be provided by the presentation of interactive data.

We recognize that the tags identified in the Edgar Filing Manual are intended to evolve and become more elaborate over time and, accordingly, it is possible that the incidence when special elements will be needed to satisfy the most detailed level of footnote tagging may decrease over time. However, we think it is premature before greater experience is gained with the tagging requirements and the use of special elements to require the most detailed level of footnote and financial schedule tagging, given the extensive amount of information that companies, collectively, would be required to tag by this proposed requirement.

The language of Rules 405(d)(4) and (5) in the Proposing Release should be revised to clarify when narrative disclosures must be tagged.

Proposed Rule 405 specifies information required to be submitted to the Commission in interactive data filings. We do not believe this rule, as drafted, clearly distinguishes between narrative data requiring interactive data tags and that which would not require such tags. We recommend that the wording of proposed Rules 405(d)(4) and (5) be revised to clarify the circumstances where tagging of narrative disclosure is required (assuming in the case of footnotes that the most detailed level of footnote tagging becomes required).

In some circumstances, a company may provide narrative disclosure in order to provide additional information to investors, even though such information is not required, while in other circumstances the company may determine that, although a narrative is not required by specific GAAP (or IFRS) requirements and Commission rules, disclosure is necessary in order that information otherwise provided in its financial statements not be misleading. Of course, in the latter circumstances, the narrative disclosure would be required by Rule 12b-24 or similar provisions of the Commission's rules. We do not believe that a company should be required, in order to determine if it has complied with the interactive data submission requirements, to make a determination as to whether a narrative statement is required in order that its presentation of information not be misleading, as distinguished from situations where the provision of the narrative information is not so required but the company includes the information for investor relations or other reasons. Accordingly, we believe that tagging of narrative disclosure in

financial statement schedules and footnotes (if and when required) should be determined by whether the narrative is required by a specific provision of GAAP (or IFRS) or Regulation S-X.

The Commission should not, at this time, expand the interactive data requirements to financial statements filed under Rules 3-09, 3-10, 3-14, or 3-16 of Regulation S-X, or financial information submitted on Forms 8-K or 6-K.

We believe it would be premature at this time for the Commission to expand the interactive data submission requirements to include financial statements filed under Rules 3-05, 3-09, 3-10, 3-14 or 3-16 of Regulation S-X, or financial information submitted on Forms 8-K or 6-K. We believe more experience must be gained with the requirements currently proposed first. We question the need for tagging financial statements of acquired businesses submitted pursuant to Rule 3-05. Tagging of the pro forma financial information may be sufficient.

The variety of information companies are required to submit, or may determine to submit voluntarily, on these forms is much more varied than normally included in periodic reports. This variety will increase the likelihood that companies will have to develop extensions of XBRL data tags provided by the EDGAR Filing Manual in order to provide interactive data submission for such information, increasing the time and cost of preparation of such submissions and likely reducing the comparability among companies of such interactive data. In addition, the circumstances under which these forms are submitted, including the time available to companies for their preparation, is often quite different from those applicable to periodic reports. Companies should first be provided the opportunity to gain experience with the interactive date submission requirements currently proposed for periodic reports before a requirement for interactive data submission is considered with respect to financial information provided on Forms 8-K or 6-K. In particular, given that companies often do not have the period for preparation of Forms 8-K and 6-K that they have for periodic reports, particularly with respect to earnings and other financial data, further experience with XBRL tagging should be obtained before consideration is given to setting a time period when interactive data with respect to financial information submitted on such forms will be due. It may be that a longer grace period after the submission of such a report should be provided for the submission of interactive data with respect to such report than currently proposed for the submission of interactive data with respect to periodic reports.

Documents and Information Covered by the Proposed Rules

The Commission should assure that revised data is tagged to promote maximum interactivity.

We generally support the Commission's proposal to require filers to provide revised interactive data at the same time they file revised financial statements with the traditional filing format. However, it is unclear from the proposal whether or not filers will be required to tag each item of revised data to indicate that the particular data is revised. Such tagging would enhance the review of and interaction with revised interactive data by users.

The Commission, in conjunction with U.S. XBRL, Inc., should develop a systematic method to review filer-added data tag extensions. The most widely added extensions could be incorporated into the taxonomies.

We support the Commission's proposal to limit the use of extensions to circumstances where the appropriate financial statement element does not exist in the standard list of tags. To further promote comparability of data across companies, we believe that the SEC, in conjunction with U.S. XBRL, Inc. ("XBRL U.S."), should endeavor to systematically review extensions with the goal of incorporating widely used extensions into the standard list of tags. To achieve this, the SEC should invite XBRL U.S. to maintain a catalog of extensions. Such a catalog will make the use of extensions highly visible to all filers. While it is not appropriate for one filer to reuse another filer's extension without modification because each extension contains the filer's ticker symbol as an element of the extension's name, the availability of the catalog will encourage filers to model their extension after existing ones to the degree this is appropriate. Such convergence will facilitate new additions to the standard catalog. To help XBRL U.S. complete the catalog, filers should be encouraged to submit all extensions to XBRL U.S. upon first use, along with information such as a description of the extension and how and where it intends to use it the extension.

Website Posting of Interactive Data

The Commission should not require filers to post interactive data on its corporate websites.

As proposed, a filer would be required to post the same interactive data filed with the Commission on its corporate website, if it has one. We do not support this requirement because it could result in the interactive data being viewed in isolation and not in relation to the periodic report as a whole. We believe it is important that the interactive data be reviewed in conjunction with the entire periodic report so users are aware of other important information such as informational content in the Management

Discussion and Analysis, risk factors and other sections. We also note that many filers provide links to periodic reports on their websites to filings on the Commissions EDGAR system, and that the same link will also provide ready access to the interactive data file. Accordingly, at this time we do not see any benefit to separately posting the interactive data file. Should a filer choose voluntarily to provide the interactive data file on its corporate web site, the Commission should also encourage such filers to also provide access to the related periodic report.

The requirements of the Proposing Release should be revised to clarify how long interactive data must be maintained on a corporate website.

Should the Commission not adopt our recommendation above to not require posting of the same interactive data filed with the Commission on a filer's website, the Proposing Release should be revised to clarify how long the interactive data file must be maintained on a corporate website.

We believe two approaches to the timing requirement are available to the Commission. One approach is set forth in Release No. 34-46464, where the Commission did not adopt a bright-line rule for the aforementioned disclosures regarding website availability of certain reports, but the Commission suggested that companies provide website access for at least 12 months. A second approach is set forth in Rule 16a-3(k), which includes a bright-line requirement that Forms 3, 4 and 5 be posted on a website for at least a 12-month period.

A filer should be permitted to post interactive data to its corporate website "as soon as reasonably practicable." Requiring such interactive data be posted to a filer's corporate website on the same day, or same time, is too much of a burden.

The Commission has solicited comments on whether the interactive data should be provided on the corporate website on the same day or, instead at the same time, as the related filing. We believe most issuers would find it more practical to deal with such a regulation if they are required to provide the interactive data on their website "as soon as reasonably practicable." We believe most issuers prefer to finalize an Edgar transmission first, and then once finalized, post information to a website. This allows for an orderly sequencing of events, and prevents mishaps from posting a different version to a website than the final version transmitted to the Commission over the EDGAR system. We note that the Commission has previously recognized technical and other obstacles in this regard in Release No. 34-46464 which adopted Item 101(e) of Regulation S-K. In fact, in that Release, the Commission recognized that such technical barriers may make a same day requirement for website posting impractical, and adopted an "as soon as reasonably practicable standard." We recommend the Commission consider whether an "as soon as reasonably practicable" standard be considered in this situation as well.

Other Uses of Interactive Data

At least initially, the Commission should not expand the interactive data requirements to other information, such as executive compensation, beneficial ownership and management reporting requirements, and contractual obligations.

The Commission has solicited comment on whether submission of interactive data should be required for a variety of other information, including disclosures about executive compensation, beneficial ownership of management and five percent or greater shareholders and tabular disclosure of contractual obligations. As indicated above, before the Commission expands the interactive data submission requirements beyond what is currently proposed, we believe that more experience with the XBRL format and a greater understanding of the costs and time associated with compliance is necessary.

We are particularly concerned that the wide variation among companies in executive compensation practices and related disclosures may not lend itself to the development of standard data tags for compensation data. For example, companies may change from year to year their compensation programs, such that a cash bonus or an equity award may have a different significance in one year than in another, necessitating narrative disclosure of the change in the program and the purpose and result of the change is required to understand the significance of the amounts disclosed for a year.

We believe that useful tagging of compensation information (both numerical and narrative) may prove a difficult and time consuming task. Given the narrative nature of much of the executive compensation disclosure, the lessons that will surely be learned as companies begin to complete the detailed tagging of footnotes and schedules will likely help to form the proper approach to any executive compensation tagging. If tagging of such information is required, the variation among companies in compensation practices may result in a high number of company-specific extensions. This will not help to achieve the Commission's goal of comparability among companies with respect to their interactive data submissions.

We do not believe the experience to date with the Executive Compensation Reader currently available on the Commission's website provides a sufficient basis for assessing the utility of having interactive data, or for fashioning interactive data submission requirements, with respect to compensation information. Accordingly, we urge the Commission to defer consideration of interactive data submission requirements for compensation information until more experience is obtained with respect to the use of XBRL tagging, including the tagging of narrative disclosures.

Timing of Compliance

We support the Commission's phased-in approach to requiring interactive data. However, the Commission should require the initial filing to be

required of all companies in connection with its Quarterly Report on Form 10-Q.

The Proposing Release provides a phased-in approach to adoption, with the largest public companies required to provide interactive data in 2008. In general, we believe the phased-in approach provided by the Commission is appropriate. However, we urge the Commission to change the effective date to require that for all filers, the initial interactive data filing would be its first Quarterly Report on Form 10-Q filed after the effective date of the final rule.

Requiring the initial interactive data filing in connection with a company's Form 10-Q would allow companies, including smaller companies, to devote more of their staff and resources to the initial tagging than they would otherwise be able to in connection with their Form 10-K. Beginning with the Form 10-Q would also provide companies with a tagged template to build upon for the following Form 10-K.

The initial interactive filing should be done in connection with the Form 10-Q if the proposed grace period is to have the desired effect. The proposed rules include the grace period because "undue expense and burden should not accompany the adoption of required interactive data financial reporting." For many smaller companies, the same employees who prepare the Form 10-K immediately turn their time and attention to preparation of the company's proxy statement after filing the Form 10-K. Even if the grace period were to be extended, after the completion of its proxy statement, many companies must immediately turn their attention to the preparation of the Form 10-Q. Thus a grace period following the filing of the Form 10-K would offer companies little relief. No similar reporting obligation generally follows immediately after the filing of a Form 10-Q, and financial statements contained in the Form 10-Q will generally require less tagging than those contained in a Form 10-K. Accordingly, requiring interactive data in connection with a Form 10-Q rather than a Form 10-K, together with a thirty-day grace period in which the exhibit containing the interactive data must be filed, will more effectively help companies, and particularly smaller companies, avoid undue expense and burden.

We agree with the position in the Proposing Release that "the three year phase-in for smaller reporting companies would permit them to learn from the experience of the earlier filers," and "would also give them a longer period of time across which to spread first-year tagging costs." While we agree further that "smaller filers tend to have simpler financial statements than larger companies, with fewer elements and disclosures to tag," as stated in the Proposing Release, it is also true that smaller filers generally have fewer staff with the accounting expertise needed to tag. The Proposing Release also notes that "both software and third party services will be available to help meet the needs of smaller filers." Although such software and services will likely be available, since a company bears ultimate responsibility for its interactive data, we believe the company's accounting

staff will spend a significant amount of time understanding and reviewing the initial tagging, even if such tagging is provided by a third party.

Liability Provisions

Interactive data must be complete, accurate and reliable. However, as proposed, Rule 406 may require revision and a phase-in period to be fair.

The Proposing Release states that Rule 406 of Regulation S-T is being proposed "to encourage accurate filing of interactive data without fear of making good faith errors." We agree that interactive data must be complete, accurate and reliable for it to accomplish the Commission's goals of providing investors "with new tools to obtain, review, and analyze information from public filers more efficiently and effectively." We are concerned, however, that the mechanism implemented through Rule 406 that the Commission has chosen to ensure the reliability of the interactive data may require revision and a phase-in period for it to be fair to filers.

We believe that changes to the proposed definition of "Interactive Data File" and to Rule 406(b) are necessary to provide adequate protections to registrants. Unlike Rule 402 of Regulation S-T, which is applicable to voluntary filers, proposed Rule 406(b) would subject the interactive data in viewable form to liability "in the same way and to the same extent as the Related Official Filing." In addition, we do not understand why Rule 406(c)(3)(C) is necessary. Given that the financial statements in the official filing will be subject to liability for violations of generally accepted accounting principles or Regulation S-X, it is unnecessary, and confusing, for a filer to be subject to liability for the same violations included in the interactive data.

We are also concerned that the existence of interactive data would exacerbate the misunderstanding of many people as to the reliability of financial data by encouraging the use of the numbers without an examination of the footnotes to the financial statements and the other disclosures in the Related Official Filing that explain the estimates and judgments inherent in the preparation of financial statements and the trends and uncertainties that affect an understanding of the predictive nature of historical financial statements. Accordingly, we urge the Commission to consider requiring inclusion within the Interactive Data File of a legend that states that the interactive data should be used together with the Related Official File.

The Definition of "Interactive Data File" in Rule 11 should be revised to cover all interactive data filed with the Commission pursuant to Rule 405.

The proposed definition of "Interactive Data File" in Rule 11 would result in circularity to the provisions of Rule 406(c) that would undermine the Commission's goal of not causing registrants "fear of making good faith errors." By requiring that "the machine-readable computer code that presents information in eXtensible Business

reporting Language" be "in electronic format in accordance with §232.405," the Commission's proposed definition could be used to suggest that a registrant's failure to comply with the detailed requirements of proposed Rule 405, regardless of the significance of that noncompliance, would result in the interactive data not meeting the definition of "Interactive Data File" and thereby not being covered by the protections in Rule 406(c) available for the "Interactive Data File." This would result in the Interactive Data File becoming a prospectus and part of a registration statement and subject to liability under Section 11 and 12. Accordingly, we recommend that the definition be changed to cover all interactive data filed with the Commission pursuant to Rule 405. Our recommended changes follow, with our new language in capital letters and our recommended deletions in brackets:

> Interactive Data File. The term Interactive Data means the machine-readable computer code that presents information in eXtensible Business Reporting Language PURSUANT TO [in electronic format in accordance with] §232.405.

Proposed Rule 406(b), together with the proposed definition of "Interactive Data in Viewable Form" and proposed Rule 406(c)(3), result in questions as to the scope of a registrant's exposure to liability for interactive data in human-readable format. The proposed definition of "Interactive Data in Viewable Form" in Rule 11 would limit the human-readable interactive data that would be subject to the "usual liability provisions of the federal securities laws" through Rule 406(b) to only that human-readable text data that is identical in all material respects to the corresponding data in the traditional format filing as displayed "through software the Commission provides." Proposed Rule 406(c)(3) only protects the Interactive Data File from liability under specified sections of the securities laws. Accordingly, the following interpretive questions arise:

- Would a registrant be exposed to liability for human-readable text generated from software that a user of interactive data uses to convert the Interactive Data File into human-readable form when such software was not provided by the Commission?
- Would a registrant be exposed to liability for human-readable text generated from software the Commission provides if that human-readable text were **not identical in all material respects** to the corresponding financial data in the Related Official Filing, as defined in the proposed amendments to Rule 11?

We believe, in answer to the first of these two questions, that the Commission should revise proposed Rule 406(b) to make clear that registrants have no liability for interactive data in human-readable text if it was generated by software other than that provided by the Commission. Any risk of liability for human-readable text generated by such third-party software would be inappropriate given the registrant's absence of control over such content.

With respect to the second question, we believe it may be appropriate for the Commission to adopt a rule that provides that registrants are subject to liability for the human-readable form of the Interactive Data File in the same way and to the same extent as they are liable for the corresponding data in the Related Official Filing, regardless of whether the human-readable text is "identical in all material respects" to the corresponding financial data, provided, however, as follows:

- the Interactive Data in Viewable Form is generated, as proposed, only through use of the Commission's software;
- the Commission first assures itself and registrants that such software is available to registrants without any delays, and, based on adequate testing, such software reliably converts the interactive data to human-readable text that is displayed in a manner identical in all material respects to the financial data in the Related Official Filing, including the notes to the financial statements and the data that is subject to customized tags or extensions;
- the Commission first adopts a safe harbor, like that provided by proposed Rule 406(c)(1), that protects a registrant that exercised good faith in complying with Rule 405 from liability for Interactive Data in Viewable Form if it files a corrected Interactive Data File as soon as reasonably practicable after it becomes aware that the Interactive Data in Viewable Form is not materially identical to the corresponding financial data in the Related Official Filing; and
- the Commission first assures itself and registrants that adequate software exists for a registrant to make corrections in the Interactive Data File if the conversion results in human-readable text that is not identical in all material respects to the corresponding financial data.

If Rule 406(b) is adopted as proposed, a filer would have to assure itself before filing the interactive data exhibit that the human-readable interactive data is, in fact, identical in all material respects to the financial statements in the filing so that it does not have exposure to additional liability. In order to do this, the filer would have to use the viewer that the Commission provides. While the Commission asserts that it provides the viewer that enables a filer to review the interactive data in viewable form, we are concerned that a filer might not be able to access the viewer because it is then in use, or the filer has some other technical difficulty, or may not have time to use the viewer prior to filing the registration statement or report. In addition, we are concerned that the software may not properly convert the Interactive Data file so that it is displayed in a manner materially identical to the corresponding financial data. In this regard, it is our understanding that registrants are likely to use customized tags or extensions and we do not know whether the Commission's viewer would convert the financial data presented using such customized tags or extensions in a manner that would display such data in a way that is materially identical to the financial statements. In addition, it is our understanding that no software exists today to recast the block tagged notes to the financial statements in a manner that results in the notes looking like the financial statements in the applicable filing. We would object to any liability for interactive data in

human-readable form until such time as the software exists to recast the customized tags, extensions and notes, including the notes when they are tagged by individual number and narrative discussion, so that they are materially identical to the notes in the filing. Otherwise, filers would be subject to liability because customized tags and extensions are not recast to result in a materially identical display of the data subject to such tags and because the notes are displayed in a misleading and confusing way.

In addition, if the viewable form data is not substantially identical to the financial statements in the formal filing, the filer would need appropriate software to assist it in determining how to fix the interactive data. It is unclear whether sufficient software exists for that purpose.

We are also concerned that the need for filers to make appropriate changes if the viewable data is not "identical in all material respects to the corresponding data in the traditional format filing" may further complicate a filer's compliance with the requirement to submit the interactive data exhibit on a timely basis. If the Commission's viewer is not available at the time the filer needs it or the filer is unable to fix the interactive date so that the viewable form is substantially identical to the financial statements in the filing, the filer would either have to file its report late or rely on the temporary hardship provided in proposed Rule 201(c)(1), assuming that the unavailability of the viewer or the inability to fix the interactive data would be considered to meet the standard for a temporary hardship exemption of experiencing "technical difficulties preventing the timely preparation and . . . Submission of an Interactive Data File."

Given the necessity of a filer being able to recast the interactive data, including the notes, into viewable form that is identical in all material respect to the financial statements in the filing and having software to assist the filer in determining how to fix any interactive data that is not substantially identical to the financial statements in the filing in viewable form, we recommend that Rule 406(b), if retained, become effective only after the Commission finds that (1) its software is effective in recasting all of the interactive data, including the customized tags, extensions and notes to the financial statements, so that the viewable form is identical in all material respects to the financial statements, unless there are problems that the filer is capable of fixing, and (2) software exists to assist registrants in fixing any problems with the interactive data. In addition, we recommend that the Commission provide the same relief from liability for the human-readable interactive data as it does for the interactive data in Rule 406(c)(1) given the need for a filer to make changes in the interactive data if the human-readable interactive form is not identical in all material respects to the financial statements. That is, the interactive data in viewable form would not be subject to the same liability as the financial statements if (a) the interactive data is amended so that it is identical to the financial statements in all material respects when it is in human-readable form (b) as soon as reasonably practicable after the filer becomes aware that the human-readable interactive data is not identical in all material respects to the financial statements (c)

provided that the filer had made a good faith and reasonable attempt to comply with Rule 405.

We recommend eliminating Rule 406(c)(3)(C) as unnecessary and confusing. If, as stated in the Proposing Release, the term "substantive content of the financial and other disclosures" is intended to mean the "numerical values in the financial statements or footnotes and the statements in the footnotes," we don't understand why Rule 406(c)(3)(C) is necessary given the existing liability of a registrant for those numbers and statements. If the intent is to provide investors with a cause of action for tagging errors that result in different numbers and statements in the Interactive Data File, we recommend that the effective date of the rule be postponed until the Commission is satisfied that the software available for the conversion to interactive data would not result in errors in the numbers or the statements. The software should ensure that the substantive content of the financial and other disclosures are the same as in the Related Official Filing before interactive data is required to be filed.

Finally, as noted above, we worry that interactive data may be perceived to be more reliable and exact than it can be. Many people today believe that financial statements are precise measures of performance and financial condition, perhaps because they do not understand or review the notes to the financial statements or do not review a registrant's management's discussion and analysis ("MD&A"), risk factors and other disclosures. By facilitating the manipulation of numbers, interactive data may lead to less review of the notes to the financial statements, the MD&A, risk factors and the rest of the Related Official Filing. In view of the importance of those other disclosures to an understanding of the estimates and judgments inherent in the preparation of financial statements and the trends and uncertainties that affect an understanding of the predictive nature of historical financial statements, we recommend that the Commission consider requiring inclusion within the Interactive Data File of an appropriate warning legend. Such a legend could state that the information included in the Interactive Data File should not be used by itself because it presents information that is included in the Related Official File and that the Related Official File should be reviewed in connection with any use of the Interactive Data File.

There follow our responses to the Commission's specific questions in the Proposing Release related to liability, which are set forth below in italics:

Do the proposed rules strike an appropriate balance to promote the availability of reliable interactive data without imposing undue additional costs and burdens? If not, what balance of liability will best encourage filers to prepare reliable interactive data without subjecting them to undue fear of mis-tagging? How does the "extensibility" of interactive data, i.e., a filer's ability to customize the standard list of tags to correspond more closely to the company's particular financial information, affect your answer?

We think that the revisions discussed above are necessary to achieve an appropriate balance between providing liability relief and ensuring accurate data.

What are the risks to investors under the proposed liability rules? Will investors still find the interactive data sufficiently reliable to use it?

Although we do not believe that the proposed liability rules will, in and of themselves, adversely affect investors, we do believe that investors might be adversely affected if they believe that they can rely on the interactive data without regard to the Related Official Filing. Accordingly, we believe the warning legend recommended above is extremely important. In addition, we believe that investors might be better protected if liability applied to interactive data in viewable form that is not materially identical to the data in the Related Official Filing provided that the Commission can meet the conditions discussed above relating to the Commission's software for a registrant to reliably check the human-readable form of the Interactive Data File and software for a registrant to fix any errors on a timely basis. We do not believe that auditor association with the interactive data is necessary once the conversion and corrective software is determined to be effective, nor is such an association appropriate since this is not the auditor's area of expertise. We note that such an association is not required for information filed in an electronic format pursuant to Regulation S-T.

Should interactive data be subject to liability if a filer does not tag its financial information in a manner consistent with the standards approved by the Commission, irrespective of the filer's good faith effort? If the answer is yes, what should the filer's liability be for such errors, and should liability attach even if the mistake is inadvertent? What if the error is the result of negligent tagging practices, but there was no affirmative intent to mislead?

We do not believe that the filer should be subject to liability if it made a good faith effort to tag its financial statements in a manner consistent with the Commission's approved standards. If the error was the result of negligent tagging practices, the Commission should impose liability if those practices reflect a lack of good faith, but the filer should not be subject to liability to investors or other users of financial statements for any violation of Rule 405.

If interactive data are subject to liability as proposed, is it necessary or appropriate for viewable interactive data to be subject to liability as and to the extent proposed or otherwise? Should the answer depend on the degree of liability to which the interactive data are subject? Should viewable interactive data be subject to liability in a manner or to an extent different than as proposed?

We believe that the proposal for liability relating to the viewable interactive data generated from the Commission's software is appropriate because it would encourage registrants to ensure that their Interactive Data File is identical in all material respects to

the financial data in the Related Official File. We believe, however, that investors would be better protected if registrants were liable for human-readable text that differs from the financial data in the Related Official File provided the conditions discussed above are first met. We agree with the proposal that only the Commission should be able to bring an action against a filer for a violation of Rule 405, however.

Should any or all interactive data be encompassed within the scope of officer certifications? Is there any reason to treat interactive data differently from traditional format data in this respect?

We believe that it may be appropriate to include interactive data within the scope of officer certifications once the conditions recommended above for effectiveness of Rule 406(b) are met and once validation software to check compliance with Rule 405 is determined to be sufficiently reliable and available to registrants. We caution however, that any such requirement may be burdensome for the CEO and CFO, who may not have the technical expertise to know whether the Interactive Data File complies with Rule 405.

Should any or all interactive data be deemed filed for purposes of Section 34(b) of the Investment Company Act and, if so, should it be regardless of compliance with proposed rule 405 or a filers good faith and reasonable efforts to comply?

Since the Proposing Release does not apply to investment companies, it is not clear which interactive data would be subject Section 34(b) of the Investment Company Act. However, to the extent Section 34(b) applies to interactive data, we believe this interactive data should not be deemed filer for purposes of that provision, which is the approach taken in the Voluntary Program. We also believe that the status of the interactive data as not filed for purposes of Section 34(b) should be regardless of either compliance with Rule 405 or deemed compliance based on a good faith or reasonable efforts standard. As explained above, compliance with Rule 405, which imposes comprehensive and exacting technical standards, should not affect the fundamental status of interactive data filed under the securities laws, and thus whether it is considered a prospectus or part of a registration statement under the Securities Act, or filed pursuant to Section 34(b) of the Investment Company Act.

Finally, if at some future time interactive data is considered filed for purposes of Section 34(b), the Commission should make clear that any determination of whether the interactive data included a material misstatement or omission would have to take into account the entire registration statement or report to which the interactive data relates, including information not submitted in interactive data.

Should the liability for interactive data be exactly the same as it is for XBRL-Related Documents under the voluntary program?

No. As already noted, we agree with liability under a revised Rule 406(b) provided that the changes recommended in this comment letter are made and the recommended warning legend is added.

Would software be commercially available and reasonably accessible to all required interactive data filers, investors and analysts that would make detection of tagging errors, such as the use of inappropriate tags or improper extensions, easy and cost-effective? If so, would such monitoring by investors and analysts likely discourage the improper use of extensions or negligent conduct in the tagging process?

We do not know whether the requisite software will be available but believe that it would be extremely helpful to registrants, the Commission and investors. If such software is possible, we recommend that the Commission consider delaying the effective date of interactive data reporting until the software is available so that improper tagging does not result in ineffective interactive data that adversely affect investor interest in using the data. We believe that such software, together with the provisions of Rule 406(b) and monitoring by investors and analysts of the tagging process, would discourage the improper use of extensions or negligent conduct in the tagging process.

Would the use of software to search for and detect any differences between a filer's interactive data and the Commission-approved interactive data tags, financial statement captions, and other attributes depend on the degree of analyst coverage or investor interest?

We think that filers would likely want to use software to search for and detect any differences between its interactive data and the Commission–approved interactive data tags, financial captions and other attributes to facilitate their compliance with Rule 405. Accordingly, if such software can be developed, we recommend that it be available to registrants free of charge so that they can check their interactive data before filing it with the SEC.

Should a rule expressly state that the Commission retains the authority to enforce compliance with proposed Rule 405?

Yes. While we believe that is the case, the rule should clearly state that only the Commission has the authority to enforce compliance with Rule 405.

Should we require the involvement of auditors, consultants, or other third parties in the tagging of data? If assurance should be required, what should be its scope, and should any such requirement be phased in?

We do not think that the Commission should mandate the involvement of auditors, consultants or other third parties in the tagging of data. If filers determine that they need such involvement, they will seek it.

Should we phase in increasing levels of liability over time? Are the proposed limitations on liability necessary and appropriate at the outset, for example, the first year that a company is subject to the interactive data requirement, but inappropriate at a later time? Should we require that interactive data be subject to more liability later?

As discussed above, we believe that the provisions of Rule 406(b) should not be effective until the Commission is satisfied that adequate software is available for recasting the interactive data and fixing any problems.

Should the validation software, as contemplated, cause an interactive data exhibit with a major error to be held in suspense in the electronic filing system while the rest of the filing would be accepted and disseminated if there were no major errors outside of the interactive data exhibit? In that case, should the validation software hold the entire filing in suspense or reject or accept the entire filing or interactive data exhibit?

As discussed above, we believe that the validation software should be accessible to filers so that they can avoid major errors in their interactive data and avoid filing interactive data that the Commission would have to exclude from the filing. Nevertheless, to the extent that the Commission identifies a major error in the interactive data, we believe that the Commission should accept the rest of the filing and reject only the interactive data exhibit. We believe that, in such a case, as in the case of other late filings of interactive data, if the filer submits the corrected interactive data, its failure to file the interactive data on time should not adversely affect the filer's ability to use Forms S-3, S-8 and F-3. Accordingly, we recommend that the second sentence of the note to paragraph (c) of proposed Rule 201 be eliminated so that Rule 201(c) is not inconsistent with the proposed amendments to Forms S-3, S-8 and F-3, if they are adjusted as proposed or as we recommend they be revised.

Penalties for Failure to Comply

Failure to provide required interactive data should not preclude filers from being eligible to use short form registration Forms S-3, S-8, or F-3 or to conduct offerings of securities previously registered on those forms.

We believe that the proposal to preclude filers from using Forms S-3, F-3 or S-8 if they do not provide the required interactive data submission is unwarranted for the reasons set forth below.

Unlike the failure to timely file information under certain items of Form 8-K or the failure to timely file another Exchange Act report, the failure to timely provide the required interactive data does not mean the underlying information is not publicly available - it just means that it is not available in a particular format.

The ability of issuers to use short form registration statements is a cornerstone of their ability to access capital markets. The inability to access capital markets can place issuers at a significant disadvantage and could continue to erode the desirability of a US listing versus a foreign exchange listing. The proposed rule would also disallow use of short form registration statements if a required website posting were not made. In Release No. 34-46464, the Commission noted that loss of eligibility for non-compliance with website posting requirements would be overly burdensome on companies. Similarly, in deciding not to extend this penalty to the failure to timely provide the disclosures required by all items of Form 8-K, the Commission observed that "the potential significant burden that could result from a company's sudden loss of eligibility to use Form S-2 or S-3 under these circumstances could be a disproportionately large negative consequence." Release No. 34-49424, *Additional Form 8-K Filing Requirements and Acceleration of Filing Deadline.*

Many uncertainties exist as to the ability of issuers to rapidly transition to an XBRL-based disclosure system, and it cannot be assumed at this time that the inability to make such filings will always be within the issuer's control. At this time, the impact of XBRL filings and their importance to the markets is unknown. Accordingly, we believe that the loss of eligibility to use Forms S-3, F-3 and S-8 would be a disproportionately large negative consequence and should not be implemented.

Not only should issuers be considered eligible to use short form registration statements for new filings, we also suggest that the final rule be clarified to indicate that offerings may continue under previously effective short form registration statements if the required interactive data file is not provided. The inability to continue offerings under effective registration statements could cause an issuer to incur significant liabilities under registration rights agreements where selling security holders are involved, and could impose significant losses and costs on selling security holders by not being able to sell securities during advantageous market conditions. We believe that existing registration rights agreements do not clearly provide for an issuer's ability to impose a "black out period" on selling security holders with respect to the absence of an interactive data submission.

Failure to provide required interactive data should not result in a filer being deemed to not have adequate public information available for purposes of the resale safe harbor exemption provided by Rule 144.

For many of the same reasons articulated above regarding the ineligibility to use short form registration forms, we believe the proposal that a filer would be deemed to not have adequate current public information under Rule 144 during the period it is unable to use Form S-3, S-4 and Form S-8 is unwarranted. In addition, there are the following additional reasons discussed below why we believe the proposal is unwarranted.

Many holders of restricted securities have no control over whether an issuer is making interactive data filings. To limit their flexibility to sell based on actions of an issuer who is otherwise compliant with its reporting obligations amounts to an undue penalty.

In Rule 144(c)(1), the Commission has recognized that an issuer need not be current in its Form 8-K reporting obligations for there to be adequate current public information. In Release No. 34-49424, entitled Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date, the Commission noted that there would be a significant burden on selling security holders if eligibility to rely on Rule 144 is conditioned upon a company's satisfaction of the new Form 8-K requirements. We suggest the same policy applies if eligibility is conditioned on compliance with making interactive data filings.

As noted above, at this time, the impact of XBRL filings and their importance to the markets is unknown. The utility and necessity of holders of restricted securities to rely on Rule 144 is well known. As a result, the consequences of the inability to use Rule 144 outweigh known benefits and this portion of the proposed rulemaking should not be implemented.

Should the Commission not agree with our analysis, it would be necessary to further amend Rule 144, Form 10-K and Form 10-Q in connection with this rulemaking proposal. Rule 144[1] provides a seller of restricted securities may rely on a statement that the issuer has filed all required reports under Section 13 or 15(d) of the Exchange Act in the preceding 12 months. More specifically, the related disclosure on the cover page to Form 10-K and 10-Q would need to be revised to indicate that the issuer has filed all interactive data files and posted the interactive data files on its website, if any, during the required time period. Likewise, Rule 144 would need to be revised to indicate that a seller of restricted securities may rely on such a statement. Otherwise, the seller may not know whether a Rule 144 sale is appropriate.

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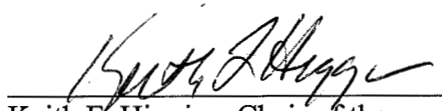
[1] See Note to 144(c), paragraph 1.

The Committees appreciate the opportunity to comment on the Proposing Release and respectfully request that the Commission consider the recommendations and comments set forth above. Members of the Committees are available to discuss them should the Commission or the staff so desire.

Respectfully submitted,



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