

U.S. Securities and Exchange Commission
To the att. of Ms. Nancy M. Morris
Secretary
100 F Street, NE
Washington, D.C. 20549-9303

Per e-mail to rule-comments@sec.gov

Brussels, 22 January, 2008

Re: Comments on Concept Release on Mechanisms to Access Disclosures Relating to Business Activities in or with Countries Designated as State Sponsors of Terrorism; File No. S7-27-07

Dear Ms. Morris,

We are submitting this letter in response to the request of the Securities and Exchange Commission (the “Commission”) for comment about whether the Commission should develop mechanisms to facilitate greater access to companies’ disclosures concerning their business activities in or with countries designated as State Sponsors of Terrorism. The request for comment appears in Concept Release No. 33-8860; 34-56803; File No. S7-27-07 (the “Release”).

We believe that it would be a mistake for the Commission to provide “enhanced access” to company disclosure regarding activities in countries designated as State Sponsors of Terrorism, because it could inappropriately label companies with legitimate activities as supporters of terrorism, and because it goes beyond the Commission’s function as a market regulator. We believe that the Commission should not pursue this proposal.

- ***An “enhanced access” system could unfairly label as supporters of terrorism companies that have perfectly legitimate activities and have no relationship with terrorism.***

By publishing a list of companies engaging in business in or with countries designated as State Sponsors of Terrorism, the Commission would necessarily associate those companies with terrorism and create an impression that they support terrorism. While we have no doubt that the Commission would in good faith take every reasonable measure to

Secretary General

Mrs. Dorien FRANSENS

Mail address

Rue Belliard 4-6
1040 BRUSSELS

Telephone +32 (0)2 289 25 70
Fax +32 (0)2 502 15 60
e-mail dorien.fransens@ealic.org

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avoid this, we are much concerned that the Commission would not be able to fully control the outcome.

Branding a company as being associated with terrorism could have serious consequences. The potential prejudice goes well beyond the possible impact of disinvestment decisions by some institutional investors (which could hurt shareholders by driving down a company's share price). If a company is mistakenly associated with terrorism, it could unfairly lose access to contracts awarded by public or private bodies that might use the Commission's list to determine eligibility for contracting or bidding procedures. It could have its reputation unfairly tarnished in the press if journalists were to use the Commission's list without fully appreciating its purpose. These are only examples – there are numerous reasons why being included on the Commission's list could hurt a company (and, indirectly, its shareholders), even when its disclosure clearly shows its activities to be legitimate.

If the Commission's list were limited to companies that in fact provided direct or indirect support for terrorism, then the potential prejudice to a company of being included on the list might not be problematic. It is clear, however, that the Commission's list will not be so limited. In the Release, the Commission acknowledged that inclusion in such a list could be related to "benign activities such as news reporting within a State Sponsor of Terrorism or immaterial activities that the company voluntarily disclosed."¹ Many companies also carry out business activities in the identified countries in connection with international bodies such as the World Bank, or provide badly needed services to international relief agencies.

Would the Commission be able to distinguish between companies engaging in "good" and "bad" activities in such countries? We believe there is a significant risk that it would be difficult for the Commission to do so. We also believe that it would not be sufficient for the Commission to publish a disclaimer to the effect that inclusion on the list does not imply that a company supports terrorism. However the disclaimer might be worded, users of the list would have the opposite impression.

Finally, we do not believe it would be practical for companies to "tag" the data themselves using interactive technology.

- ***Maintaining a list of companies doing business in countries designated as State Sponsors of Terrorism is beyond the scope of the Commission's role as a market regulator.***

We find the Commission's proposal to publish a list of companies with business activities in or with countries known to sponsor terrorism to be outside the scope of the Commission's basic mandate to maintain fair, orderly, and efficient markets and facilitate capital formation, and to protect investors. While we support international efforts to combat

¹ Release at 4.

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international terrorism, we believe that other U.S. and international agencies have been appointed to carry out these efforts.

The fact that the Commission's proposal is based on furnishing information to investors interested in terrorism-related issues does not change the fact that publishing this type of list is not an appropriate function for the Commission. There are many issues that might be of interest to investors. The Commission performs a legitimate role by ensuring that companies disclose those issues when they meet the traditional materiality standards of the U.S. federal securities laws. Maintaining and publishing a list relating to only one specific issue is not the same thing.

It might be of interest to investors and more in keeping with the Commission's mandate, for the Commission to publish lists of companies with questionable accounting policies or identified material weaknesses in internal control over financial reporting. It might also be of interest to investors for the Commission to list companies doing business in countries that are known to use child labor, to deny equal rights to all citizens, to engage in human rights violations, or to violate internationally accepted environmental standards (all of which are issues for so-called "socially responsible investment" funds). The Commission has not, however, taken action in these areas.

We do not believe it is the Commission's responsibility to publish lists of companies engaging in activities in countries that may be considered to undertake reprehensible action or inaction. Private groups are free to create lists of such companies based on publicly available information and to encourage the public to consider such lists. As an example, private groups successfully mounted campaigns to put economic pressure on South Africa to change its apartheid laws, including by encouraging investors not to acquire shares in companies doing business there. Those campaigns did not suffer from the lack of a Commission-published list of companies engaging in activities in South Africa, just as international efforts to combat terrorism will not be affected by the Commission's decision whether to maintain a list of companies doing business in or with countries designated as State Sponsors of Terrorism.

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The Commission has taken a number of recent steps to make the U.S. market more attractive to foreign issuers, including revising the deregistration rules, eliminating U.S. GAAP reconciliation for companies publishing IFRS financial statements and emphasizing the concept of materiality in internal control evaluations. We have strongly supported those steps, and we support more broadly the Commission's efforts to adapt the U.S. regulatory regime to the realities of the global market.

The Commission asked in the Release whether the concept of a web tool that begins with a Commission-generated list of companies disclosing activities in these countries is inherently flawed. We believe it is inherently flawed, and we strongly recommend that the Commission abandon this proposal.

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Very truly yours,



Dorien FRANSENS
Secretary General

cc: The Honorable Christopher Cox, *Chairman*
The Honorable Paul S. Atkins, *Commissioner*
The Honorable Annette L. Nazareth, *Commissioner*
The Honorable Kathleen L. Casey, *Commissioner*
Jorgen Holmquist, *Director General, DG Internal Market and Services*
Pierre Delsaux, *Director Free movement of capital, company law and corporate governance, DG Internal Market and Services*
Andrew A. Bernstein, *Cleary Gottlieb Steen & Hamilton LLP*

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*EALIC and UNIQUE, two organisations representing the vast majority of publicly quoted companies across Europe, have agreed to **merge** at a recent Board meeting in Brussels. The merger that has immediate effect is seen as an important reinforcement of the issuers' position in their striving for well functioning and liquid European financial markets. As of March 2008, the renewed body will be known as "**EuropeanIssuers**". The markets covered by "EuropeanIssuers" count some 9,200 public companies with a combined market value of some € 8,500 billion.*

EALIC, the European Association of Listed Companies, promotes the common interests of European issuers on a European level. Its scope of activities includes the legal and regulatory framework specific to listed companies in general and to the issuing and trading of securities on European markets in particular. EALIC was incorporated in December 2002 as an international non-profit association. Its member-base counts six national associations of listed companies, namely VEUO (Netherlands), ANSA and AFEP (France), ABSC-BVBV (Belgium), ASSONIME (Italy) and SEG (Poland). In addition, more than seventy public companies from the countries represented by these associations as well as from Portugal and Spain, are direct members of the association.

UNIQUE, the Union of Issuers Quoted in Europe, founded early 2003 as a network dedicated solely to promoting the interests and concerns of the Quoted Company sector, has three primary goals: to create a distinct identity for the sector, and demonstrate its value to the investment markets and EU economy; to represent the interests and requirements of the sector, to enable it to increase its contribution to the European economy and ensure that its specific needs are addressed; to build a strong and vocal collective body of support from within the sector, among company directors and securities industry leaders. UNIQUE is a coalition of 9 associations from as many different European countries, who together represent the interests of c. 4,000 quoted companies (issuers) with more than 10.7 mill. employees and a capital stock of roughly 1,160 bill. € (Austria: Aktienforum; Bulgaria: Bulgarian Industrial Capital Association; Cyprus: SYDEK; Finland: Finnish Foundation for Share Promotion; France: Middenext; Germany: Deutsches Aktieninstitut e.V.; Greece: The Union of Listed Companies; Switzerland: SwissHoldings; United Kingdom: The Quoted Companies Alliance).

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BELGIUM	ABSC-BVBV	Hugo VANDAMME	Chairman	Rue des Sols 8 1000 BRUSSELS	+32 2 515 08 29
BULGARIA	BULGARIAN INDUSTRIAL CAPITAL ASSOCIATION	Rumen RADEV	Vice Chairman of the Governing Board	20 Fr. Joliot Currie, Str. - fl. 8 1113 SOFIA	+359 2 963 37 52
CYPRUS	SYDEK (Cyprus Association of Public Listed Companies)	Pieris THEODOROU	Chairman	c/o Hellenic Bank Public Company Limited Corner Limassol Ave. & 200 Athalassas Ave. 2025 STROVOLOS NICOSIA	+357 22 50 000 4
FINLAND	FINNISH FOUNDATION FOR SHARE PROMOTION	Sirkaa-Liisa ROINE	President	PO Box 20 00131 HELSINKI	+358 9 668 91 60
FRANCE	AFEP	Jean-Martin FOLZ	Chairman	11 Av. Delcassé 75008 PARIS	+33 143 59 85 11
	ANSA	Robert BACONNIER	Chairman & Managing Director	39 rue de Prony 75017 PARIS	+33 147 63 66 41
	MIDDLENEXT	Caroline WEBER	Director General	Palais de la Bourse - Place de la Bourse 75002 PARIS	+33 1 55 80 75 75
GERMANY	DEUTSCHES AKTIENINSTITUT	Rüdiger VON ROSEN	Managing Director	Niedenau 13-19 60325 FRANKFURT AM MAIN	+49 69 929150
GREECE	UNION OF LISTED COMPANIES	Panayotis DRACOS	President of the Executive Committee	4 Zalokosta Str. 106 71 ATHENS	+30 2 10 36 41 742
ITALY	ASSONIME	Stefano MICOSSI	Director General	Piazza Venezia 11 00187 ROMA	+39 06 69 529 214
POLAND	SEG - Association of Stock Exchange Issuers	Beata STELMACH	Chairwoman	ul. Nowy Świat 35 lok.9 00-029 WARSAW	+48 22 826 26 89
SWITZERLAND	SWISSHOLDINGS	Christian STIEFEL	Member of the Executive Committee	Nägeligasse 13 3000 BERN 7	+41 31 356 68 68
THE NETHERLANDS	VEUO	Rob PIETERSE	Chairman	c/o Tripolis Burgerweeshuispad 301 1076 HR AMSTERDAM	+31 20 577 1433
UNITED KINGDOM	QUOTED COMPANIES ALLIANCE	John PIERCE	Chief Executive	6 Kinghorn Street W Smithfield LONDON EC1A 7HW	+44 20 76 00 37 45