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Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
rule-comments@sec.gov

Re: Securities and Exchange Commission File No. S7-27-07

Dear Ms. Morris:

The Institute of International Bankers welcomes the opportunity to provide the Securities and Exchange Commission (the "Commission") comments in response to the Commission's concept release concerning whether to develop mechanisms to facilitate greater access to companies' disclosures regarding their business activities in or with countries designated as "State Sponsors of Terrorism" ("SSTs").[1]

The Institute continues to have serious concerns regarding the development by the Commission of mechanisms to selectively highlight international banks' legitimate and legal business activities in jurisdictions that the United States has designated as SSTs. Virtually any mechanism designed for this purpose risks losing sight of the context in which such activities take place and creating misleading impressions for investors concerning the nature of such activities. Most crucially, we believe such a mechanism inevitably will be perceived as a form of "blacklisting" of issuers that engage in such activities. Insofar as foreign private issuers, including international banks, have greater flexibility than U.S. issuers under home country, U.S. and international law to have business dealings in certain jurisdictions the United States has designated as SSTs (such as Cuba), the "blacklisting" nature of the mechanism would become even more problematic, as it would necessarily target foreign private issuers disproportionately. We respectfully submit that the message such measures would convey to the international community would be at odds with recent efforts to enhance the competitiveness of the U.S. capital markets.

[1] See Release Nos. 33-8860; 34-56803, 72 Fed. Reg. 65862 (Nov. 23, 2007) (the "Release")

Last year, we wrote to Chairman Cox to express our concerns regarding the Commission's addition of a "State Sponsors of Terrorism" link on the Commission's Web site. We believe the Commission made an appropriate decision to remove the link from its Web site pending further consideration of the matter, and we appreciate the opportunity to provide further feedback to the Commission at an early stage of its consideration of whether to develop an alternative mechanism in this area.

Overarching Concerns

The Institute has two main, overarching concerns regarding potential alternatives to the Commission's original web tool, including those identified in the Release.

First, as the Commission notes in the Release, the Commission does not have mechanisms for highlighting other types of business activities in issuers' disclosure. At a basic level, we believe that an effort to highlight certain disclosures by content—regardless of the mechanism employed—risks creating an editorial impression for users of the information that the information is more important than other information, or is important for a particular reason (the most potentially dangerous being an implication that investors should not invest in the securities of the issuer whose disclosure is highlighted in that way—the "blacklist" phenomenon).[2]

We would respectfully submit that the Commission should avoid creating such impressions in general, but should be especially careful in an area such as the foreign policy arena surrounding SSTs. Disclosure of business activities with SSTs implicate a variety of considerations – the U.S. sanctions regimes, home country laws applicable to foreign private issuers, international sanctions and other laws, and implications for international trade and cross-border investment, to name just a few – that fall well beyond the scope of the Commission's mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. Indeed, if the Commission were

[2] In this regard, it is important to consider potential effects on investor perceptions in light of the stated reasons for certain investors' interest in the Commission's development of mechanisms to highlight disclosure regarding business in or with SSTs. In the Release, the Commission cites a letter from 50 trustees of state treasurers to the Departments of State, Treasury and Commerce and the Commission requesting publication of a list of companies doing business in SSTs, including Sudan. See Letter from 50 trustees of state treasurers, cited in the Release at 65862 n. 2. This request apparently stemmed from various state law divestment initiatives that have put pressure on the identification of companies that do business in Sudan in particular. That investors will perceive the highlighting of companies' disclosure as a blacklist with a governmental imprimatur is illustrated by the phrasing of the state treasurers' request: "We believe … that the U.S. government is the only credible and centralized authority to identify, monitor and report domestic and international companies that are operating in such countries and thereby may be acting contrary to U.S. foreign policy and humanitarian objectives." See also Letter from the Hon. E. Anthony Wayne, Assistant Secretary of State, in response to the Letter from 50 trustees, dated July 21, 2005, at 3 ("The SEC advises that such a publicly available database might be construed as investment advice or give the appearance of bias regarding the decision to invest in certain companies.") (emphasis added).

to pursue a mechanism to highlight information concerning business activities in or with U.S.-designated SSTs, we would strongly encourage the Commission to do so only jointly with the U.S. Departments of Treasury and State to ensure that adequate consideration is given to U.S. and international foreign policy and legal considerations.

We believe the selective nature of any mechanism to highlight information regarding business activities in or with jurisdictions the United States designates as SSTs will, at a minimum, lead to perceptions by investors that the Commission views the information as important and, in the worst case function as a *de facto* "blacklist" of issuers. In this regard, selectively highlighting certain types of disclosures would not promote transparency but rather would potentially distort investors' perceptions of the information available through the Commission's Web site. Furthermore, concerns about an implicit blacklist effect could lead issuers to scale back their voluntary disclosure regarding business activities in or with SSTs, thereby reducing the information provided to investors.

The risk of distorting investors' perceptions is especially pronounced in the case of foreign private issuers, which in many instances are parties to contracts supporting commercial or other legitimate dealings with or involving an SST that they entered into outside the United States (in many instances, prior to the imposition of U.S. sanctions) and that remain legally binding on them under applicable non-U.S. law, notwithstanding the existence of the U.S. sanctions. Indeed, in certain situations these dealings are such that they could be authorized under U.S. law pursuant to a license from OFAC if entered into by a U.S. person, but the foreign private issuer, where it has no U.S. operation involved in the matter (and no U.S. person is otherwise involved), is not eligible for such a license. Such potentially complex circumstances require diligent attention to the context in which an issuer's dealings in or with an SST arise and an appreciation of nuances and distinctions that would be obscured by the potential "blacklist" effect of a selective disclosure requirement.

Second, we would respectfully submit that the "blacklist" phenomenon inherent in any approach to highlighting or enhancing access to information regarding business activities in or with SSTs would exacerbate the perception abroad that the U.S. capital markets do not accommodate foreign private issuers. The label "State Sponsor of Terrorism" may create the impression of a category whose distinguishing characteristics are uniquely non-controversial. However, there is a substantial degree of international controversy that surrounds U.S. designations of other countries as SSTs.

The best example of this controversy is Cuba. The United States designates Cuba as an SST based on its own foreign policy judgments, but those judgments are not shared by the United States' principal trading partners and the home countries of most foreign private issuers, including the home countries of our members. Unlike U.S. companies, which are prohibited by U.S. sanctions programs from conducting business in or with Cuba, most international banks and other internationally headquartered companies are

generally free as a matter of home country, U.S. and international law to conduct business in or with Cuba.[3] As a result, if the Commission were to highlight information regarding foreign private issuers' business activities in or with Cuba—especially in the highly charged context of SSTs—the message conveyed to those foreign private issuers would be inconsistent with the broader U.S. message that foreign private issuers are welcome in the U.S. capital markets.

Responses to Specific Questions

Beyond these general concerns with all of the mechanisms under consideration, the Institute offers the following comments in response to specific questions in the Release:

- Whether the Commission should apply traditional standards of materiality when reviewing disclosure related to business activities in or with an SST.

The Institute believes that the Commission should not depart from traditional standards of materiality in this context. Indeed, the existence of any question regarding the definition of materiality seems to us to illustrate the inherent difficulty in developing an approach that is selectively designed to address disclosure in this area—the tendency of considerations that are not directly related to companies' financial condition or results to creep into an assessment of the information included in disclosure.

- Whether the information currently available in public filings regarding business activities in or with SSTs is sufficient.

The Institute believes the information currently available in public filings is sufficient. More importantly, however, the currently available information is presented on the Commission's Web site in a way that is essentially neutral—the Commission does not highlight, draw attention to or even direct investors to any particular subject matter content. Departing from that neutral approach is not necessary to compensate for an inadequacy in the information available, and it presents the substantial risks of distortion in perceptions by investors and discrimination against foreign private issuers outlined above.

- Whether the web tool can/should be reinstated in its original or some revised form.

The Institute strongly urges the Commission not to reinstate any form of a web tool to direct investors to issuers' disclosure concerning business activities in or with SSTs. As originally implemented, the web tool raised numerous concerns regarding,

[3] Indeed, previous U.S. legislative initiatives targeting non-U.S. companies' business activities in Cuba, such as the Helms-Burton Act, sparked significant controversy with the European Union.

among other things, misimpressions created by the manner in which the links were presented, the potential to mislead investors who did not have the same access to more current information, unjustified reputational damage to issuers, etc. We do not believe that a web tool could be effectively or efficiently redesigned to eliminate these concerns.

We agree with the suggestions acknowledged in the Release that, at a minimum, significantly greater explanation of the limitations of the information provided would need to be added. We also agree that the Commission would need to incorporate methodologies to update the information that is provided through any links to an issuer's historical disclosure. Without methodologies to update the information provided through the web links, investors could be affirmatively misled about the issuer's business activities in or with SSTs.

More fundamentally, however, we believe that our overarching concerns with any mechanism to selectively highlight disclosure of issuers based on subject matter, especially in the area of business dealings in or with U.S.-designated SSTs, would apply equally to any redesigned web tool.

- Whether the Commission should use data tags by issuers

The Release raises the possibility that issuers could use data tags—computer labels written in the XBRL computer language—to identify relevant information in the disclosure they file with the Commission. The Release suggests that by shifting this task to the issuer, and making disclosure more interactive for the users of the information, the Commission could enhance access to information regarding issuers' business activities in or with SSTs without raising the same risks associated with the web tool (e.g., mislabeling of issuers' disclosure by the Commission and the implicit characterization by the Commission of the issuers' disclosure).

In principle, reducing the Commission's role in highlighting any particular disclosure regarding business activities in or with SSTs would help mitigate some of the risks that we have identified in this letter. However, in the Institute's view, the extent of any such mitigation will depend heavily on the details of how the data tagging taxonomy is developed, implemented and applied. Based on descriptions of the Commission's use of data tags in other contexts, the Institute foresees several issues and limitations with this approach.

The Release cites positive experiences in the recent and current development of data tagging approaches for financial statements, executive compensation data and mutual fund performance (including, most recently, a taxonomy for mutual funds' risk/return summary information). However, there appears to be a fundamental difference between using data tags to guide investors in a more interactive way to these types of disclosure and using data tags to guide investors to disclosure regarding business activities in or with SSTs. Most of the Commission's previous experience with XBRL

data tagging taxonomies has been in the context of financial information that is readily identified and labeled (such as line items in a balance sheet). Even the Commission's more recent experiment with risk/return summary information for mutual funds, which is more narrative in nature, involves information that apparently can be readily identified and labeled.

It is much less clear how a taxonomy could be developed to accomplish the Commission's objectives with respect to descriptions of business activities in or with SSTs. Either the Commission in developing the taxonomy or the person who applies the taxonomy would presumably need to make judgments regarding what disclosure should be tagged and how—judgments that would not appear to arise in the same way in the other contexts cited by the Commission in the Release. Indeed, the importance of such judgments begs a number of questions, many of which are raised in the Release and none of which have clear answers: If data tagging in this context is voluntary, what incentive would be provided for issuers to tag information regarding their activities in or with SSTs? If data tagging is mandatory, will issuers be required to tag data based on materiality alone, or will some other standard apply? Will the Commission review issuers' judgments about the tagging of disclosure? In our view, the difficulty of these questions alone suggests that a data tagging approach in this context is unlikely to be workable.

Recognizing that the data tagging approach would be designed to make the issuer rather than the Commission responsible for identifying and characterizing the relevant disclosure, we also have concerns about the additional burden that such an approach would place on issuers. In light of the difference in U.S. and international legal regimes applicable to doing business in and with SSTs, we suspect, as noted above, that the additional burden of a data tagging approach will fall disproportionately on foreign private issuers, including international banks.

Lastly, we believe that even a data tagging approach that on its face minimizes the Commission's involvement in characterizing issuers' disclosure could not escape the basic reality that the Commission would be involved at some level in highlighting certain disclosures by issuers. The Release implies that the Commission would be involved in the development of the relevant taxonomy, which would then be publicly available. Users of the data would know that the tagged data has been tagged at the direction of the Commission. That involvement, as reduced as it may be, still places governmental emphasis on that disclosure as important, and in context it implies that the disclosure is important for purposes of facilitating divestment, thereby failing to eliminate the "blacklist" character of the effort.[4] As a result, the Institute remains gravely concerned

[4] Indeed, the blacklist character of a data tagging approach would arise even more clearly if the Commission were to develop a tool for rendering the tagged data, as the Commission is apparently analyzing in connection with the voluntary mutual fund program. See Release Nos. 33-8823; IC-27884, 72 Fed. Reg. 39290, 39295 (July 17, 2007).

about a data tagging approach, even if it could feasibly be adopted in a manner that minimized the Commission's involvement.

Should the Commission determine to pursue a data tagging approach to this issue, we would urge the Commission to do so only after a thorough public rulemaking process. The industry would be able to more meaningfully comment on such an approach when provided with more details in a proposed rule regarding how (and by whom) the taxonomy would be developed, what the Commission's role would be in implementing the taxonomy, and what would be required of issuers. It would be especially important to ensure that any such approach is applied evenhandedly and does not disproportionately affect foreign private issuers. In addition, to the extent that the Commission were to pursue a data tagging approach on a mandatory basis, the Institute would urge that any such approach be applied only prospectively following a reasonable implementation period, and not applied retroactively to previously filed disclosure.

The Commission's experiment with data tagging in the context of mutual funds' risk/return summary information is relatively new and has not yet been fully evaluated. At a minimum, we would encourage the Commission to postpone proposal of a data tagging approach for business activities in or with SSTs until the viability of data tagging in what appears to be a more straightforward narrative context has been proven.

We would be pleased to discuss any of the comments in this letter with the Commission or its staff. If we can be of further assistance to the Commission in this regard, please do not hesitate to contact the Institute.

Very truly yours,

Lawrence R. Uhlick

Lawrence R. Uhlick
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