

January 22, 2008

*Via Electronic Filing*

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

**Re: Concept Release on Mechanisms To Access Disclosures Relating to Business Activities In or With Countries Designated as State Sponsors of Terrorism, Rel. No. 33-8860, File No. S7-27-07**

Dear Ms. Morris:

The Investment Adviser Association<sup>1</sup> appreciates the opportunity to submit comments on an SEC Concept Release addressing whether the SEC should develop mechanisms to facilitate access to companies' disclosures concerning their business activities in or with countries designated as state sponsors of terrorism.<sup>2</sup> While we appreciate the efforts of the SEC to address this serious issue, on balance, the IAA respectfully submits that the SEC should not expend its limited resources in this area.

*Background*

The SEC's EDGAR system currently provides electronic access to registration statements, periodic reports, and other documents required to be filed by public companies. In June 2007, the SEC added a feature to this system that provided direct access to public companies' annual report disclosures regarding business activities in or with one or more countries that are deemed state sponsors of terrorism by the U.S. Department of State. The SEC added this feature as part of its initiative to "use the Internet and interactive computer technology to make public company disclosures more accessible to investors."<sup>3</sup> In response to concerns expressed both by issuers making disclosures regarding their business activities

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<sup>1</sup> The Investment Adviser Association (formerly the Investment Counsel Association of America) is a not-for-profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the Association's current membership consists of more than 500 firms that collectively manage in excess of \$9 trillion in assets for a wide variety of individual and institutional clients. For more information, please visit our web site: [www.investmentadviser.org](http://www.investmentadviser.org).

<sup>2</sup> *Concept Release on Mechanisms To Access Disclosures Relating to Business Activities In or With Countries Designated as State Sponsors of Terrorism*, Rel. No. 33-8860 (Nov. 23, 2007) (Concept Release).

<sup>3</sup> SEC Adds Software Tool for Investors Seeking Information on Companies' Activities in Countries Known to Sponsor Terrorism, Press Rel. 2007-121 (June 25, 2007).

and by users of the web feature, the SEC suspended its availability in July 2007 and subsequently issued the Concept Release to elicit further comment.

### *The SEC's Role in Providing Easier Access to Information*

The SEC has requested comment on whether providing a mechanism for access to specific information about companies' business activities in or with state sponsors of terrorism via the Commission web site is appropriate. The IAA represents the perspective of investment advisers that are consumers of the corporate disclosure that would be provided pursuant to the access proposed in the Concept Release. As discussed below, we have a number of concerns about whether the proposed access is necessary or appropriate, including the following: (1) the private marketplace has already developed methods for providing this information to investors; (2) the SEC's involvement may cause confusion given the lists, restrictions, and analysis provided by other government agencies related to countries designated as state sponsors of terrorism; (3) the SEC's initiative may place undue emphasis on the list of companies with disclosures subject to the access mechanism; and (4) the SEC has limited resources that would be diverted by this initiative.

Investment advisers regularly analyze the investment risks and merits of corporations doing business around the world. In addition, some advisory clients issue guidelines prohibiting their investment advisers from investing in companies that conduct business activities in or with countries designated as state sponsors of terrorism. Further, an increasing number of state and local governments have enacted laws prohibiting retirement funds and other public funds under their purview from investing in companies "doing business in Sudan" or other countries designated as state sponsors of terrorism, and mandating, authorizing, or suggesting divestment of any such existing holdings.<sup>4</sup> Many of these laws fail adequately to define "doing business in Sudan" or similar terms and restrictions or define them inconsistently.<sup>5</sup>

In order to comply with these laws and business demands, investment advisers have already identified and developed mechanisms for accessing relevant information about corporate activities in or with countries designated as state sponsors of terrorism. Many investment advisers turn to private services already in place that identify issuers implicated by these and other restrictions. We understand that users generally find these services to be thoughtful, well-researched, and competitively priced. These service providers review not only public disclosure of corporations but also directly ask issuers about their activities and

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<sup>4</sup> We understand that approximately 18 states have enacted laws relating to investments in companies doing business in Sudan or other countries, ranging from imposing strict restrictions to mandating divestment in certain circumstances to simply suggesting or authorizing divestment, including: AK, AZ, CA, CN, CO, DC, HI, IL, IN, IA, KS, LA, MD, MA, MO, NJ, OK, and OR.

<sup>5</sup> On December 31, 2007, the President signed into law the "Sudan Accountability and Divestment Act of 2007," which expresses the "sense of Congress" to support the decision of any State or local government to divest from or to prohibit the investment of assets of the State or local government in certain companies directly invested in certain Sudanese sectors. Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174 (Dec. 31, 2007).

provide reports reflecting their findings, thus providing increased confidence to investment advisers in selecting securities for investment in affected accounts.<sup>6</sup>

Advisers also may request clients that wish to impose restrictions on certain investments to provide a list of specific companies in which the client does not want to invest. The adviser can then follow that more specific directive. The task of interpreting exactly which issuers fit or fail to fit investors' general guidelines in this area can be difficult. The requested specific-list approach helps investment advisers add some certainty in managing their clients' portfolios. We understand that many clients also use private vendors and other resources to assist in creating these lists.

In addition, several other U.S. governmental agencies provide information and impose requirements relating to countries, corporations, or individuals doing business in or with countries designated as state sponsors of terrorism and similar activities.<sup>7</sup> Creation of an SEC list may complicate investors' analysis of which agency provides the most authoritative and relevant information and how the SEC's proposed list relates to the lists created and maintained by other agencies.<sup>8</sup> It also may be unclear what the SEC's proposed list represents and whether it imposes any requirements on advisers or other investors.

Similarly, we are concerned that the SEC's provision of direct access based on an initial list of companies with disclosure related to doing business in or with state sponsors of terrorism would result in undue emphasis on this list. The SEC's overall mission is to work with issuers to provide meaningful disclosure so that investors can make informed decisions. Companies are required to disclose substantial information about revenues, cash flow, debt, officer and director compensation, accounting assumptions, and similar information. Simply creating the list may appear to elevate corporate disclosure about activities in certain countries to a heightened level of materiality compared with other disclosures. We are not convinced that the Commission should focus on enhanced access to disclosure in this specific area as opposed to other similarly important disclosure matters.

Further, the authority inherent in a list created by a federal agency may compel investors to believe they must rely on the list, even though the list may include all companies with disclosures about business activities in or with state sponsors of terrorism without regard to relevance or materiality. For example, clients may request their investment advisers not to

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<sup>6</sup> Some legislatures implicitly recognize the value of these independent services. For example, the State of Illinois, an early adopter of Sudan legislation, recognizes in its legislation annual certifications by investment managers based on designations of companies "individually identified by an independent researching firm that specializes in global security risk." 40 ILCS 5/1-110.6(b)(5).

<sup>7</sup> For example, the State Department and the Central Intelligence Agency provide information and analysis of activities in foreign countries; the Department of Commerce imposes international trade restrictions related to certain companies and products; the Department of Treasury through its Office of Foreign Assets Control (OFAC) provides an extensive list of countries and individuals with clearly prescribed sanctions for transactions with these countries or persons; and Treasury's Financial Crimes Enforcement Network (FinCEN) advises as to which countries have insufficient protections against money laundering.

<sup>8</sup> At a minimum, if the SEC decides to proceed with this initiative, it should coordinate any efforts of identifying particular companies with other relevant government agencies and departments, including Treasury.

purchase securities of any company that makes disclosures on the SEC's terrorism list. This result may be more drastic than the SEC intends, given the wide variety and types of SEC disclosures that would be reflected via the SEC's proposed web tool.

The SEC has limited resources that would be diverted from other worthwhile activities if the SEC were to implement the proposals in the Concept Release. While the SEC's proposed efforts might provide a valuable resource for some, this is not an area of vacuum that only the SEC is able to fill. As discussed above, the private sector is already addressing a need in this area with information that is more germane to advisers than the SEC's proposed list. We encourage the SEC to devote its limited resources to more pressing regulatory priorities. Further, as discussed below, the Commission resources that would be required to establish these lists and keep them updated and accurate would be significant.

#### *Accuracy, Reliability, and Utility of Web Tool*

Should the SEC nevertheless decide that providing direct access to these disclosures is necessary and appropriate, we remain concerned regarding the accuracy, reliability, and utility of any web tool it creates. If the information is not accurate and timely, it will not be useful to investors and will instead be potentially harmful to issuers. In addition, advisers and other institutional investors may face potential liability associated with relying on inaccurate or outdated information.

The SEC would have to expend substantial effort to continually update reports available through the web tool to keep the information timely. The Commission would also have to ensure the reliability of the list of state sponsors of terrorism. For example, some state lists of restrictions still include countries where geopolitical issues are long settled, but the states have not updated the list of prohibited transactions.<sup>9</sup>

One of the concerns about having the SEC administer lists of companies and their disclosures is that the methodology used in the web tool may necessarily call for considerable subjective judgment. Depending on the methodology, the SEC may need to decide what disclosures to include and how to characterize those disclosures. Fine gradations in judgment will have a significant impact. Readers will be assessing the information provided to determine whether it is relevant and material to investment parameters imposed by various clients and other restrictions. In the end, the proposed list may be of limited utility to advisers and their clients, given the discrepancies between the SEC's list and other governmental or privately offered lists and between the SEC's list and the parameters of various applicable state and local laws.

On the other hand, many companies appearing on the SEC list of companies doing business in or with states sponsoring terrorism may be conducting appropriate activities or businesses, for example with an OFAC license permitting certain humanitarian, news gathering, or other activities approved specifically by the U.S. government through OFAC.

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<sup>9</sup> For example, the Commonwealth of Massachusetts has prohibited since 1985 investments of Massachusetts public retirement systems in securities pertaining to Northern Ireland and South Africa despite recent efforts of the State Treasurer to get the legislature to repeal these restrictions.

Conversely, these identified companies may have such a limited involvement in the relevant countries that investors would be unconcerned. Issuers also may face reputational risk or damage if the list creates a misleading impression about the extent of their business activities in or with states that sponsor terrorism.

### *Data Tagging*

The Concept Release raised the possibility of providing XBRL taxonomies that would facilitate the identification and characterization of certain disclosures. One of the implicit challenges would be to properly define certain categories to be tagged for disclosure and who would create those categories. The SEC requests comment on whether to make this “tagging” voluntary. We submit that the companies volunteering to participate would not be those whose activities would most concern investors. Further, it may not be appropriate to focus resources on this data tagging initiative ahead of according similar treatment to other important disclosures.

### *Conclusion*

On balance, the IAA believes that the SEC should pursue other priorities with its limited resources, as private corporations and other organizations are currently providing adequate services in the marketplace to address the perceived needs of investors. Please do not hesitate to contact the undersigned or Karen Barr, General Counsel, if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Paul D. Glenn". The signature is written in a cursive, flowing style.

Paul D. Glenn  
Counsel

cc: Hon. Christopher Cox  
Hon. Paul S. Atkins  
Hon. Annette L. Nazareth  
Hon. Kathleen L. Casey