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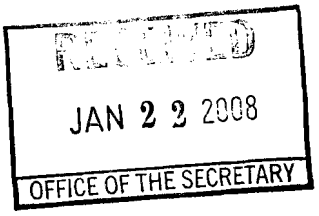

January 22, 2008

Privileged Attorney-Client Communication
Attorney Work Product

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Nancy M. Morris, Secretary
United States Securities and Exchange Commission
100 F Street, NE
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*

File No. S7-27-07

Dear Ms. Morris:

This letter is submitted on behalf of The Western Union Company ("Western Union") in response to the Securities and Exchange Commission's (the "Commission") request for comment about whether to develop mechanisms to facilitate greater access to companies' disclosures concerning business activities in or with countries designated as State Sponsors of Terrorism. *Concept Release on Mechanisms to Access Disclosure Relating to Business Activities in or With Countries Designated as State Sponsors of Terrorism*, 72 Fed. Reg. 65,862 (Nov. 23, 2007) ("Concept Release").

Western Union companies offer money transfer, money order, payment and prepaid services to people all around the world. Western Union has been serving the needs of people for more than 150 years and is today an industry leader in consumer money transfer services with agent locations in more than 200 countries and territories. In connection with its money transfer business, the United States Department of the Treasury Office of Foreign Assets Control ("OFAC") has issued a "specific license" authorizing Western Union to provide money remittance services for people to send funds to their family members in Cuba in accordance with applicable regulatory requirements applicable to such

remittances. In addition, OFAC regulations include "general licenses" authorizing the provision of services relating to non-commercial, personal remittances to and from countries that have been designated by the U.S. Government as State Sponsors of Terrorism and are otherwise subject to comprehensive sanctions that would prohibit such services.[1] Such specific and general licenses reflect a policy determination by the U.S. Government that making such personal, non-commercial remittances available in these countries is consistent with the national interests and policy objectives of the United States.

In the Concept Release, the Commission asked for comment on a number of questions concerning investor access to disclosures of business activities in or with State Sponsors of Terrorism. Western Union provides comment on request numbers 3 and 13, and also on the "General Request" that appears at the end of the Concept Release. Id. at 65,865.

I. COMMENT ON REQUEST NO. 3 AND GENERAL REQUEST

The Concept Release includes the following Request No. 3 and General Request:

> REQUEST NO. 3: Regardless of the particular approach that the Commission might pursue to provide investors with easier access to companies' disclosures concerning their business in or with State Sponsors of Terrorism, are there potential unintended consequences of providing easier access to company disclosures in this area that the Commission should consider? If so, what are they? Are there steps the Commission could take to minimize them?

Id. at 65,863.

> GENERAL REQUEST: In addition to the areas for comment identified above, we are interested in any other issues that commenters may wish to address that are related to the Commission's consideration of providing improved investor access to disclosures concerning public companies' business activities in or with State Sponsors of Terrorism.

Id. at 65,865.

In the Concept Release, the Commission questioned "whether a company's disclosure of legitimate or immaterial business activity should lead to its being identified through a web tool that highlights connections to State Sponsors of Terrorism." Id. at 65,863. Concern

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[1] 31 C.F.R. § 538.528 (Sudan); 31 C.F.R. § 560.516 (Iran).

on this point is merited. The identification of any company through a tool designed to provide special notice of connections to State Sponsors of Terrorism by itself has negative consequences. These negative consequences should not be borne by companies for legitimate or immaterial business activity because they risk harming investors in such companies and creating artificial biases in the market place that are asymmetric to the actual risks posed by such activity.

In particular, the current practice regarding disclosures of business activities in or with State Sponsors of Terrorism, as we understand it, makes no distinction between: (a) on the one hand, legitimate business activities that have been specifically licensed by the U.S. Government (e.g., OFAC or the U.S. Department of Commerce's Bureau of Information and Security ("BIS")) or otherwise authorized by the U.S. Government though laws and regulations; and (b) on the other hand, activities that may be contrary to the interests of the United States or that contribute to terrorism. For the reasons set forth below, we respectfully submit that business activities that are authorized by the U.S. Government, either through general or specific licenses or otherwise by federal laws and regulations, should not be considered *per se* material nor made the subject of any tool the Commission uses to provide enhanced access to disclosures because such authorized activities do not warrant enhanced emphasis.

First, activities that have been authorized by the U.S. Government should be presumed to constitute business activities that the U.S. Government has determined to be in the national interest and as not contributing to terrorism. The enhanced disclosure tools are only proposed for use in identifying business activities in countries that the United States Government has officially designated as State Sponsors of Terrorism. Therefore, when the U.S. Government officially authorizes certain activities in those countries that it has so designated, there is no longer a rational basis for providing enhanced disclosure to investors. Whatever qualitative materiality may attach to activities undertaken with or in State Sponsors of Terrorism that are contrary to the interests of the United States or that may contribute to terrorism, such considerations should not apply to activities that the United States government has authorized notwithstanding its designation of those countries as State Sponsors of Terrorism. Indeed, in some cases, the U.S. Government may wish to encourage certain activities by authorizing or even soliciting them, but the consequences of enhanced disclosure may serve to deter such activities. Even if such activities are labeled as "benign," however, special treatment of these items would likely be misleading or confusing to some investors who may not appreciate that the U.S. Government has authorized the activity in question and, therefore, such activity is consistent with the national policy objectives of the United States and is not furthering terrorism.

Second, where business activities in or with State Sponsors of Terrorism have been authorized by the U.S. Government and are not independently material, treating them as "qualitatively" material *solely* because they are undertaken in a State Sponsor of Terrorism and providing enhanced disclosure highlighting them creates the risk that these legitimate activities will be improperly used to make

investment decisions. Specifically, investment decisions may be premised on uninformed political considerations that fail to differentiate between benign or helpful business activities that may serve the United States' interests (e.g., in developing free markets, advancing freedom, or improving conditions for populations in these countries in certain targeted ways) and those that are contrary to the interests of the United States or may contribute to terrorism. Many investors may be unaware of how OFAC sanctions programs operate, in particular that OFAC specifically authorizes certain activity through general and specific licenses. Moreover, highlighting authorized activities along with other activities that were not authorized or that are inconsistent with the laws or policies of the United States reduces the effectiveness of any enhanced disclosure program, because the latter will be diluted by the presence of the former and the distinctions between the two may escape investors.[2]

These views are wholly consistent with the objectives of the Office of Global Security Risk. On March 31, 2004, SEC Chairman William Donaldson testified before Congress that the Office of Global Security Risk "will function within the traditional disclosure mission of the Commission" and will have the following primary objectives:

- to identify companies whose activities raise concern about global security risks that are material to investors;
- to obtain appropriate disclosure where merited;
- and to share information as necessary and appropriate with the other key government agencies responsible for tracking terrorist financing.[3]

Chairman Donaldson also testified:

> The Office of Global Security Risk will focus on asymmetric risk by assisting review staff in giving consideration to whether U.S. or foreign companies that are registered with the SEC have operations or other exposure with or in areas of the world that may subject it and its investors to material risks, trends or uncertainties. This consideration would include whether a company has operations in a country or area of activity where political, economic or other risks exist that are material, or whether a company faces public or government opposition, boycotts, litigation, *or similar circumstances that are reasonably likely to have a material adverse impact on a company's financial condition or results of operations*." (Emphasis added.)

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2 To counter these misperceptions, companies might be forced to include in their disclosure documents lengthy "primers" on U.S. sanctions programs and OFAC regulations. This could draw even more attention to the activities in question, thus exacerbating the over-emphasis on such activities.

3 Mr. Donaldson's testimony is available at http://www.sec.gov/news/testimony/ts033104whd.htm.

Although there may be a perception that enhanced disclosure has been mandated by Congress for any activity in or with a State Sponsor of Terrorism, Western Union believes this is not the case. In his testimony before Congress, Chairman Donaldson recognized that the Office of Global Security Risk was "created in response to the 2004 appropriations report language." Contrary to common misperceptions, there was no mandate for the duties of the Office of Global Security Risk in the Consolidated Appropriations Act of 2004. Rather, these are set forth in House Report 108-221 from the Committee on Appropriations for predecessor legislation, which was incorporated by reference in House Conference Report 108-401 for H.R. 2673, which ultimately became the Consolidated Appropriations Act of 2004. Although the *report* included "duties" of the Office of Global Security Risk, neither those duties nor the requirement to create the Office are set forth in the Consolidated Appropriations Act of 2004 or any other law. In any event, Chairman Donaldson's articulation of the manner in which the Office of Global Security Risk would function was consistent with a careful reading of the report, which stated as follows:

> The Committee is concerned that American investors may be unwittingly investing in companies with ties to countries that sponsor terrorism and countries linked to human rights violations. For example, the Committee is aware of certain companies listed on U.S. exchanges that are linked to human rights abuses in Sudan. The Committee believes that a company's association with sponsors of terrorism and human rights abuses, no matter how large or small, can have a material adverse effect on a public company's operations, financial condition, earnings, and stock prices, all of which can negatively affect the value of an investment. In order to protect American investors' savings and to disclose these business relationships to investors, the Committee directs the Commission to establish an Office of Global Security Risk within the Division of Corporation Finance. The duties of this office shall include, but not be limited to: (1) establishing a process by which the SEC identifies all companies on U.S. exchanges operating in State Department-designated terrorist-sponsoring states; (2) ensuring that all companies sold on U.S. exchanges operating in State Department-designated terrorist-sponsoring states are disclosing such activities to investors; (3) implementing enhanced disclosure requirements based on the asymmetric nature of the risk to corporate share value and reputation stemming from business interests in these higher-risk countries; (4) coordinating with other government agencies to ensure the sharing of relevant information across the Federal government; and (5) initiating a global dialogue to ensure that foreign corporations whose shares are traded in the United States are properly disclosing their activities in State Department-designated terrorist-sponsoring states to American investors. The Commission is directed to provide the Committee with quarterly reports on the activities of Office of Global Security Risk.

Several important observations can be made from this appropriations report language. First, duty (2) must be read so that the word "operating" does not mean that any activity whatsoever in or with State Sponsors of Terrorism must be disclosed to investors. Such a reading would be inconsistent with duty (3), which requires a weighing of risks, and would also fail to take into consideration the long history of legal precedent regulating the matters that must be disclosed to investors by public companies. This language should be understood to require disclosure by companies that have a corporate presence in State Sponsors of Terrorism that would in any event be required to be disclosed consistent with U.S. securities laws (i.e., companies must not secretly engage in operations in such countries that are material to investors or undervalue risks attendant to doing business in such countries). Thus, duty (2) is simply a mandate to ensure that companies are disclosing that which they were already required to disclose about their operations in State Sponsors of Terrorism.

Second, the enhanced disclosure requirement discussed in duty (3) focuses on the same issue that Chairman Donaldson emphasized: asymmetric risks to corporate share value and reputation. Where such activities are undertaken with the authority of the U.S. Government, the risks to investors are not the same as in cases in which a foreign issuer is, for example, building a facility that may be used by a State Sponsor of Terrorism for military purposes. The latter activity creates reputational risks that the former activities do not.

Third, the duties expressed in the House Report are premised on risks arising from "ties to countries that sponsor terrorism and countries linked to human rights violations" and "association with sponsors of terrorism and human rights abuses." Where the U.S. Government has expressly authorized certain activities in a country it has designated as a State Sponsor of Terrorism, these risks should be presumed not to be present. Indeed, it is doubtful that the House Report was intended to express concerns about activities that were expressly authorized by the U.S. Government.

Applying these principles, companies that engage in activities in or with a State Sponsor of Terrorism that are expressly authorized by the U.S. Government in a license, law, or regulation should not be required to disclose those activities unless there is an independent obligation to do so, and, in any event, such disclosure should not be subjected to any "enhanced disclosure" tools envisioned by the Concept Release. Mandating the highlighting of such activities to the investing public where other risks are not treated in this manner could result in an inaccurate perception by the investing public that lawful activities expressly authorized by the U.S. Government are a negative factor affecting the value of the company. Therefore, the act of highlighting legitimate, authorized activity unfairly harms both the company and its current investors and provides information to investors that may serve to undervalue the company.

The correct approach is the one described by Chairman Donaldson in his testimony -- to "focus on asymmetric risk" to a company, which may be created by "operations or other exposure with or in areas of the world that may subject it and its investors to material risks, trends or uncertainties." Not all activities in countries that the United States has designated as a State Sponsor of Terrorism pose such risks. On the contrary, the Office of Global Security Risk must make reasoned judgments about what activities give rise to *material* asymmetric risks and to ensure that those are disclosed. This task is admittedly more difficult than requiring the disclosure and highlighting of *all* activities in countries that have been designated as a State Sponsor of Terrorism, even when those activities are not material. However, it is exactly this type of analysis that investors deserve. Excluding the activities of issuers that are authorized by the U.S. Government from enhanced disclosure will also allow the Office of Global Security Risk to focus resources on addressing activities by issuers that may be contributing to terrorism or are otherwise contrary to U.S. national interests.

II. COMMENT ON REQUEST NO. 13

The Concept Release includes the following Request No. 13:

> REQUEST FOR COMMENT NO. 13: Is the concept of a web tool that begins with a Commission-generated list of companies inherently flawed?

Id. at 65,864.

We agree with the comments of the National Foreign Trade Counsel that the objectives of the Commission can be achieved by traditional disclosure methods, and that the Commission should not provide enhanced access through the use of a tool that highlights certain activities above all others without regard to an actual analysis of materiality on a company-by-company basis. However, to the extent that a web tool or any other tool is utilized notwithstanding the better reasoned argument against enhanced disclosures, such a tool must begin with a Commission-generated list or result from some other screening of companies whose activities do not give rise to a material asymmetric risk meriting enhanced disclosure. Certain standards for doing so must be articulated. Among those, as discussed above, should be that companies that report activities, all of which are undertaken pursuant to authorization by United States law or regulation, will not be included in any tool developed by the Commission and will not have their reports disclosed to the public by the Commission.

To the extent the tool does *not* exclude companies that have engaged only in activities that have been authorized by the United States Government or other activities that do not present a material risk to investors, such a list would be inherently flawed. The premise for any enhanced disclosure must be that there is a special reason to alert the investing public to certain risks. That reason must be no less than (1) that there are risks to corporate share value *and* reputation, and (2) that these risks are material. Failure to screen the list for

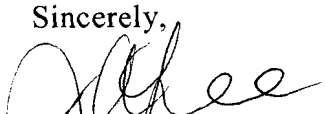
activities that do not merit special disclosure will create a risk of undue prejudice caused by the mere placement of a company on the list. Companies that are adhering to U.S. law do not belong on such a list and their presence will create artificial biases that will harm, not help, investors.

In this regard, it should be noted that the fact that a country has *not* been designated as a State Sponsor of Terrorism does not mean that business activities in such a country are free from asymmetric risk. The designation of a country as a State Sponsor of Terrorism is a national policy statement about a significant aspect of that country's governmental behavior. When activities are authorized by the U.S. Government notwithstanding such a designation, the activities should be evaluated in the same manner as activities in any part of the world in which there are risks as a result of political climates, criminal activities, or risk of violence. Such activities have no place in a program designed to highlight activities that may be contributing to or otherwise associated with terrorism fostered by the governments in certain countries.

* * *

Thank you for your consideration of these comments. Please contact the undersigned if you have any questions or if additional information would be helpful.

Sincerely,



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