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The Deputy Director-General

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Ms Nancy Morris
Secretary
Securities and Exchange Commission
100F Street, NE
Washington DC, 20549-1090

Dear Sir or Madam

Re: Concept Release on Mechanisms to access disclosures relating to business activities in or with countries designated as state sponsors of terrorism [Release Nos. 33-8860; 34-56803; File No. S7-27-07]

I have pleasure in submitting the response of European Commission services to the Securities and Exchange Commission's (SEC) invitation to comment on its concept release on mechanisms to access disclosures relating to business activities in or with countries designated as state sponsors of terrorism (SSTs)¹ ('the SEC Concept Release').

In spite of the expiration of the deadline for public comments, we believe there is still an added value for European Commission services to convey their observations on the SEC Concept Release. The observations contained in this response reflect extensive consultations with the 27 governments of the European Union, the Committee of European Securities Regulators (CESR), representing 29 securities regulators in the European Economic Area, and the EU professional associations representing the different categories of EU foreign private issuers active in the United States. Accordingly, the views expressed here are supported by the European Securities Committee, representing the governments of all the 27 Member States of the European Union.

Observations

As an introductory remark, having followed closely the setting up of the original webtool of Summer 2007 for an enhanced access to SSTs disclosures (the 'Summer 2007 Webtool') and subsequent developments, European Commission services welcome the decision of the SEC to solicit public comments on these important issues. However, European Commission services wish to share three significant concerns with SEC staff in relation to the SEC Concept Release.

¹ Concept Release on Mechanisms to access disclosures relating to business activities in or with countries designated as state sponsors of terrorism [Release Nos. 33-8860; 34-56803; File No. S7-27-07]

1) Disproportionate impact on foreign private issuers

We welcome the fact that the SEC Concept Release is mindful of the risks and possible unintended consequences of an enhanced access to SSTs disclosures. However, we consider (as this was already the case with the Summer 2007 Webtool) that the two scenarios put forward (i.e. "improved webtool" or use of a "data tagging" system) would **disproportionately affect foreign private issuers**, and among those, issuers headquartered in EU countries (i) where business activities in certain of the countries listed in the SEC Concept Release are considered legitimate and legal and (ii) which are fully compliant with sanctions applied by the EU in the context of the EU list of terrorist organisations and persons linked to terrorist activities.

We believe EU foreign private issuers would suffer unfair reputational or material damage as a result. We believe this could potentially become an additional disincentive on investment in the US for foreign private issuers – and thus undermine recent efforts to make US capital markets more attractive. Finally, unilateral initiatives would jeopardize the EU's active stance in a multilateral context against governments supporting terrorism.

2) Risk of using lists of companies as "blacklists" would not disappear

The two scenarios proposed would still enable third parties to **easily turn the "instant lists" of companies having links in or with SSTs into "blacklists"**. A possible overflow of 'unfiltered' information as a result of the application of the 'materiality test' by the companies and their counsels² was one of the key issues raised by the summer 2007 Webtool. The first scenario (i.e. "improved webtool") would not permit to address this issue. We understand that the second scenario put forward in the SEC Concept Release (use of a 'data tagging' system) aims to provide a response to this concern. Such a scenario includes the development of a 'taxonomy' of the various types of disclosures which could be made in respect of activities in or with SSTs (humanitarian activities, news reporting...).

However, a 'data tagging approach' based on taxonomy may still enable investors to produce 'instant lists' of companies³. If such lists are put together without due consideration to, among other things, the contents of the information filed, its place in the overall filings of the company and the overall regulatory context there would still be a risk of third parties turning such 'instant lists' into 'blacklists'. We believe EU foreign private issuers would, again, suffer unfair reputational or material damage as a result.

3) The two scenarios proposed may prove unreliable sources of information for investors

The main drawback of an "improved webtool" would be that it would be impossible in practice to keep it permanently up to date (save an indefinite commitment of SEC resources). This means it would be difficult for an "improved webtool" to provide a reliable source of information to investors. We also understand that the second scenario,

² We understand that the SEC staff had already put in place certain "filters" in the context of the Summer 2007 webtool to exclude disclosure of information clearly unrelated to activities in or with SSTs.

³ As this is the case in relation to the Webtool recently put in place in December 2007 enabling instant comparisons of executive pay

i.e. a "data tagging" system would make available information to investors the moment it was electronically filed with the Commission. We are not familiar with the applicable regime for SEC filing requirements, but we would like to receive confirmation that such filings enable companies to post with the SEC any relevant update to their activities in real time.

In addition, another drawback of the two scenarios would be that the disclosure and the contents of the information disclosed would ultimately depend on the individual judgment of companies. We do believe that the risk of litigation is likely to act as a deterrent to companies who would consider concealing activities in or with SSTs. However, we do not know to which extent this deterrent would ensure that the information filed by companies would in any event fully reflect the extent of its activities in or with SSTs (as opposed to, for instance, independent investigations carried out in this respect), especially as (i) federal securities laws do not impose a specific disclosure requirement in this respect and (ii) the applicability to such situations of the materiality criteria provided in federal securities laws remains unclear.

Conclusion

The European Commission's services are of the opinion that none of the scenarios put forward in the SEC Concept Release would remedy the fundamental concerns raised by the development by the SEC of enhanced access to disclosures relating to business activities in or with SSTs. We thus request the SEC not to pursue further initiatives in this area.

The services of the European Commission remain entirely at your disposal for any further information you might need (Claire Bury, Head of Unit, Company law, Corporate Governance and Financial Crime, + 322 296 0499 and Maria Velentza, Head of Unit, Securities Markets + 322 295 17 23). These issues could also be discussed on the occasion of future meetings between European and US authorities or, possibly, in the context of the United States/ European Union Financial Markets Regulatory Dialogue.

We thank you for your consideration in this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'DW', with a horizontal line underneath it.

David Wright
Deputy Director General

Cc: Jorgen Holmquist, Sven Gentner, Pierre Delsaux, Claire Bury, Philippe Pellé, Mario Nava, Maria Velentza, Tony Dempsey, Birgit Weise-Montag, Olivier Girard,

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