

## Statement of Steven E. Bochner

I am a partner in the law firm of Wilson Sonsini Goodrich & Rosati and a member of our firm's Executive Management Committee. I practice in the corporate and securities field and I regularly counsel companies regarding their disclosure and reporting obligations under the federal securities laws.

Technology is changing the way investors receive and use company information in dramatic fashion. Delivery of final prospectuses electronically, e-proxy, and publicly available and real time electronic road shows and quarterly webcasts are recent examples of how technology can benefit investors and reduce issuer costs at the same time. The XBRL initiative holds the promise of streamlining the analysis of financial data and enhancing the usability of this data in ways not previously achievable. However, when it comes to imposing additional costs and determining potential liability associated with XBRL tagged data, we should proceed cautiously. Additional costs mandated by new regulation will be borne disproportionately by smaller public companies, moving in exactly the opposite direction of the work of the SEC's Advisory Committee on Smaller Public Companies, if the costs do not align with the benefits.

The key questions are (1) what processes will be required, (2) what assurances should be obtained and (3) what liability will accrue as a result of mandating that financial data be provided in XBRL format. In the SEC's 2005 release establishing the voluntary XBRL pilot program, the SEC provided that XBRL data would be furnished, not filed, for purposes of Section 18 of the Securities Exchange Act of 1934, including that section's liability provisions. The SEC also provided that XBRL data would not be deemed automatically incorporated by reference into SEC filings. The SEC also clarified that such information would not, during the voluntary program, be subject to the internal control and disclosure control provisions of the 1934 Act, including the related CEO and CFO certification requirements. The SEC also provided relief from liability for a good faith and reasonable attempt to make the tagged data correct, provided the underlying financial data in the corresponding EDGAR filing is not misleading.

These various safeguards in the SEC's 2005 release represent a measured and appropriate approach for implementing the voluntary pilot XBRL program. The well chronicled problems and cost overruns experienced with implementing Section 404 of the Sarbanes-Oxley Act, while admittedly on an entirely different scale, provide a useful lesson in implementing new regulation where the costs are not known. I believe this experience underlies the SEC's public statements that the agency will do more economic analysis with respect to the burden of future regulation, particularly as it relates to smaller public companies.

Let me now turn to the main points I want to make today. I support the proposals outlined in your Progress Report to adopt a more measured and cautious approach with respect to liability and assurance as the SEC contemplates moving towards a mandatory XBRL regime. Specifically, a phased-in approach focused on larger companies first is an appropriate way to implement a new rule

where the costs and burdens are uncertain. We should obtain data, not make assumptions, with respect to potential costs, particularly as taxonomy development, approaches for tagging data, such as the “bolt-on” and “integrated” methods, and third party vendor software and services are a work in progress. A more cautious phased transition period has been used successfully and appropriately in implementing other regulation, such as accelerated filing deadlines for periodic reports under the 1934 Act and effectiveness of internal control testing under Sarbanes-Oxley Section 404, and this phase-in approach has been particularly important to smaller public companies. Similarly, starting with a system where XBRL data is furnished, rather than filed, is appropriate in the initial mandatory phase. Furnished documents are subject to Rule 10b-5 liability, oversight responsibilities by the Audit Committee and the Board, disclosure controls and procedures and CEO/CFO certification requirements under the 1934 Act.

While on the subject of disclosure controls, I believe it is appropriate to apply disclosure control provisions to XBRL data as we move from the voluntary to the mandatory phase of the XBRL program. By applying the disclosure control provisions under the 1934 Act, issuers will have to develop processes and procedures to ensure tagged data is accurate, and their senior officers will have to certify as to the effectiveness of these processes and procedures. Mandating that XBRL data be filed, rather than furnished, invokes additional liability provisions, such as Section 18 of the 1934 Act and, in registered offerings, Section 11 of the Securities Act of 1933. While this would be good news for the plaintiff’s bar, it is unnecessary, at least during the initial mandatory phase.

Finally, and most importantly, we should proceed cautiously before mandating auditor assurance. Many companies will decide to involve their auditors in various ways. However, requiring auditor or other third party assurance of XBRL-tagged data in the initial mandatory phase will increase the costs of preparing financial reports before those costs are fully known, which as I noted earlier will be borne disproportionately by smaller public companies. As I have also noted, once XBRL data is subject to the disclosure control provisions and officer certifications of the 1934 Act, issuers will be required to put in place systems to insure such data is accurate. I don’t believe they should be required to pay auditors to provide assurance during the initial mandatory phase. We have just been through a difficult several years trying to undo the vast cost overruns attributable to the well intended but flawed implementation of Section 404, and we should not move hastily to require a new set of costs for U.S. reporting companies until we understand them better and until the infrastructure required is further developed. The sensitivity to the concerns of smaller public companies noted in your Progress Report is well founded and appropriate.

Thank you for giving me the opportunity to speak with you today, and good luck with the rest of your important work.