COUNCIL OF INSTITUTIONAL INVESTORS

Suite 500 • 888 17th Street, NW • Washington, DC 20006 • (202) 822-0800 • Fax (202) 822-0801 • www.cii.org

Via Email

July 3, 2008

Florence E. Harmon
Acting Federal Advisory Committee Management Officer
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: File Number 265-24

Dear Ms. Harmon:

I am writing on behalf of the Council of Institutional Investors ("Council") an association of more than 140 public, corporate and union pension funds with combined assets of over $3 trillion.[1] Pursuant to your request for written comments in connection with the July 11, 2008, public meeting to discuss and deliberate the draft recommendations of the Securities and Exchange Commission ("SEC") Advisory Committee on Improvements to Financial Reporting ("Committee"),[2] and in response to the related June 19, 2008, editorial "Much needed beacon for investors" by Committee chair Robert Pozen ("Editorial"),[3] we respectfully submit the following additional comments as a supplement to our comment letter of March 31, 2008 ("March Letter").[4]

Restatements

It appears that the Committee is continuing to pursue draft recommendations that would change existing guidance to permit companies to avoid restating their financial statements for certain types of errors.[5] On this issue, the Editorial states:

> The committee advocates the prompt correction and disclosure of all significant errors, but it does not believe that every one should automatically lead to a restatement; rather, a company should amend past financial statements only when they are material to current investors.[6]

[1] A list of the members of the Council of Institutional Investors ("Council") can be downloaded at http://www.cii.org/about/council_members.
[2] Advisory Committee on Improvements to Financial Reporting, Securities Act Release No. 8932, Exchange Act Release No. 57,990 (June 19, 2008), http://www.sec.gov/rules/other/2008/33-8932.pdf.
[3] Robert Pozen, *Much Needed Beacon for Investors*, Financial Times 1 (June 19, 2008), *available at* http://www.ft.com/cms/s/0/f89039ca-3d60-11dd-bbb5-0000779fd2ac.html.
[4] Letter from Jeff Mahoney, General Counsel, Council, to Nancy M. Morris, Federal Advisory Committee Officer, Securities and Exchange Commission (March 31, 2008), http://www.sec.gov/comments/265-24/26524-79.pdf.
[5] *See* SEC Advisory Committee on Improvements to Financial Reporting, Audit Process and Compliance Subcommittee Update 5-16 (May 2, 2008), http://www.sec.gov/rules/other/2008/acifr-apcsupdate-050208.pdf [hereinafter *Subcommittee Update*].
[6] Pozen, *supra* note 3, at 1.

Our continuing concerns with the draft recommendations permitting companies to avoid restatements for certain reporting errors are at least twofold.[7] First, the draft recommendations appear to be predicated on an environment in which the number of restatements is growing.[8] As indicated in the March Letter that environment simply no longer exists.[9]

Since the issuance of the March Letter, additional evidence has been provided confirming that the number of restatements has in fact declined and is likely to continue to do so.[10] A May 30, 2008, report by Glass-Lewis & Co. ("Glass Lewis") explains:

> After a decade long run-up, the number of financial restatements filed by companies to correct accounting errors fell last year. . . .
>
> The number of restatements in 2006 will probably go down as the most ever. Last year's decline begins a trend that is likely to continue. One reason is that the largest public companies, complying with Section 404 of the Sarbanes-Oxley Act, have undergone up to four years of internal-control tests and independent audits. Thousands of companies have reinforced the systems, checks and balances they maintain to ensure their financial reports are accurate.[11]

Second, and more importantly, we are unconvinced that the draft recommendations permitting companies to avoid restatements for certain reporting errors are in the best interests of investors or consistent with Council policies supporting "accurate, transparent, and understandable financial reporting."[12] On this point, we again generally agree with the recent analysis by Glass Lewis which states:

> The new guidelines proposed by the SEC advisory committee are designed not to reduce the number of errors, but the number of corrections. . . . [W]e think the logic behind some of the committee's proposals is flawed. . . .
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> *We believe if financial reports contain errors companies should correct them through restatements. The goal should be to ensure accurate financial statements that are comparable across multiple periods and companies*.[13]

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[7] Letter from Jeff Mahoney, *supra* note 4, at 9-12.
[8] *See* Pozen, *supra* note 3, at 1 ("[T]he number of financial restatements has risen dramatically, though there seems to be a decline in the severity of the accounting errors that caused them."); *Subcommittee Update*, *supra* note 5, at 6 ("While reducing errors is the primary goal, it is also important to reduce the number of restatements that do not provide important information to investors making current investment decisions.").
[9] *See* Letter from Jeff Mahoney, *supra* note 4, at 10.
[10] *See, e.g.*, Mark Grothe, *Restatements: Out of Sight, Out of Mind*, Glass Lewis & Co. 1 (May 30, 2008) (on file with Council).
[11] *Id.*
[12] Council, Policies on Other Governance Issues, Independence of Accounting and Auditing Standard Setting (adopted Mar. 20, 2007), http://www.cii.org/UserFiles/file/council%20policies/05-22-08%20independence%20of%20accounting%20and%20auditing.pdf.
[13] Grothe, *supra* note 10, at 1 (emphasis added).

Committee's Objective

More broadly, we note that Committee's charter and bylaws provide that the objective of the Committee is:

> [T]o examine the U.S. financial reporting system, with a view to providing specific recommendations as to how unnecessary complexity in that system could be reduced and how that system could be made more useful to investors.[14]

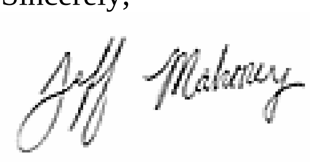
Notwithstanding the stated objective of the Committee, there is a perception by some in the investment community that many of the Committee's draft recommendations are largely in response to concerns that have been raised by preparers or auditors and are not directed to the concerns or needs of investors. Whether or not that perception is accurate, we believe that the acceptance of the Committee's recommendations could be enhanced if prior to completing its final report the Committee first performs a thorough review and analysis of each draft recommendation from the perspective of an investor. That review and analysis might include consideration of the following two questions:

(1) Is the Committee confident that the draft recommendation is generally supported by investors?
(2) Is the Committee confident that the draft recommendation will result in a financial reporting system that is generally more useful to investors?

If the answer to either of the above questions is "no," the Committee, consistent with its governing documents, might consider soliciting additional input from investors, revising the draft recommendation, or omitting the draft recommendation from the final report. In our view, such an approach is more likely to achieve Committee chair Pozen's vision—one which we share—of improved financial reporting that provides a much needed beacon for investors.

We very much appreciate the hard work and dedication of the Committee and chair Pozen on these very difficult and complex issues. If you have any questions or if we can provide any additional information regarding our March Letter, or this supplement thereto, please feel free to contact me at jeff@cii.org or at 202.261.7081.

Sincerely,



Jeff Mahoney
General Counsel

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[14] United States Securities and Exchange Commission, Advisory Committee on Improvements to Financial Reporting, Charter, Art. B (Jul. 17, 2007), http://www.sec.gov/rules/other/2007/33-8817charter.pdf; Securities and Exchange Commission, Advisory Committee on Improvements to Financial Reporting, By-Laws and Operating Procedures, § I (as adopted on Aug. 2, 2007), http://www.sec.gov/about/offices/oca/acifr/acifr-bylaws.htm.