

# COUNCIL OF INSTITUTIONAL INVESTORS

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## Via Email

July 31, 2008

Florence E. Harmon  
Acting Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: *Release Nos. 33-8924; 34-57896; 39-2455; IC-28293; File No. S7-11-08*

Dear Ms. Harmon:

I am writing on behalf of the Council of Institutional Investors (Council), a nonprofit association of more than 140 public, union and corporate pension funds with combined assets that exceed \$3 trillion. Member funds are major shareowners with a duty to protect the retirement assets of millions of American workers. As a leading voice for long-term, patient capital, the Council welcomes the opportunity to provide its views on the United States Securities and Exchange Commission's (SEC or Commission) proposed rules that would require public companies to provide financial statement information to investors in eXtensible Business Reporting Language (XBRL).

While the Council appreciates the SEC's efforts to develop ways to present financial information in a form that would improve its usefulness to investors, we believe that the proposed accuracy and reliability regime for interactive data would first need to be strengthened in order for XBRL to deliver on its promises. As indicated by the Council's existing policies, we believe one of the key elements of high quality financial information is the presence of some level of assurance that the data provided by companies to investors is accurate and free of material misstatement.<sup>1</sup> As we have previously stated in our public communications to the Commission about XBRL:

The Council understands that some preliminary testing of the accuracy with which companies have applied data tags to financial information was not encouraging. We believe financial information reported using XBRL will need to be independently verified in some manner in order to provide investors with assurance that companies have tagged their financial data correctly. Without such assurance, XBRL is unlikely to be useful to investors.<sup>2</sup>

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<sup>1</sup> Council of Institutional Investors, 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>.

<sup>2</sup> Council of Institutional Investors, SEC Issues Briefing, Part II: Division of Corporation Finance, XBRL 13 (Spring 2008) (on file with Council).

According to the proposal, the accuracy and reliability of interactive data will be assured largely by (1) liability-related provisions that will apply to XBRL submissions, and (2) the use of validation software and other technology.<sup>3</sup> Our concern is that such a proposed regime constitutes a weaker standard of investor protection for financial data in XBRL format than for the financial data contained in traditional financial reports.

More specifically, the proposal's liability-related provisions appear to provide even less legal protection to investors for misstated or inaccurate XBRL data than currently exists for misstated or inaccurate data contained in traditional financial reports.<sup>4</sup> As one expert legal analysis of the proposal explains:

The proposed rules significantly narrow the causes of action available to a plaintiff bringing a private action against an issuer arising out of errors contained in the interactive data file that are not present in the related official filing. Issuers, underwriters and auditors would not be subject to liability for errors in the interactive data file under Section 11 or 12 of the Securities Act, and persons making or causing misstatements in the interactive data file would not be subject to liability under Section 18 of the Exchange Act.<sup>5</sup>

Similarly, the ability of the Commission's validation software and other technology to successfully identify inaccurate or misstated information in the XBRL data is also unclear.<sup>6</sup> The language in the proposal fails to offer investors and other users of XBRL data with much comfort that the level of assurance provided by the validation software and the application of technology is equivalent to the level of assurance currently provided by the independent external audit and the CEO and CFO certification required for the traditional financial reports.<sup>7</sup> Investors are also unlikely to be comforted by the following stated basis for the Commission's decision to abandon those valuable tools for ensuring accurate and reliable financial information: "we seek the rapid adoption and use of interactive data without imposing unnecessary cost and expense on filers."<sup>8</sup>

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<sup>3</sup> Proposed Rule, Interactive Data to Improve Financial Reporting, 73 Fed. Reg. 32,794, 32,808 (June 10, 2008), <http://www.sec.gov/rules/proposed/2008/33-8924fr.pdf>.

<sup>4</sup> *See id.* at 32,798.

<sup>5</sup> Cleary Gottlieb Steen & Hamilton LLP, Update on the SEC's XBRL proposal – liability consideration, Globe Business Publishing Ltd 2 (June 23, 2008), [http://www.cgsh.com/update\\_on\\_the\\_secs\\_xbri\\_proposal\\_liability\\_considerations/](http://www.cgsh.com/update_on_the_secs_xbri_proposal_liability_considerations/) [hereinafter *Cleary*].

<sup>6</sup> *See* 73 Fed. Reg. at 32,808-10.

<sup>7</sup> *See id.*; *Cleary, supra* note 5, at 1 ("[T]he SEC could have required the annual financial information in the interactive data file to be audited by the company's auditors, and it could have subjected the interactive data file to be certified by the company's CEO and CFO to the same extent as the financial information in the related official filing."). We note that the SEC's Advisory Committee on Improvements to Financial Reporting has recommended that, as a "precondition" to mandating the filing of XBRL financial statements, there should be "successful XBRL U.S. GAAP taxonomy testing." Revised Draft Final Report of the Advisory Committee on Improvements to Financial Reporting to the United States Securities and Exchange Commission 107 (July 31, 2008), <http://www.sec.gov/about/offices/oca/acifr/acifr-dfr-073108-v2.pdf>.

<sup>8</sup> 73 Fed. Reg. at 32,809.

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In conclusion, the Council can not support the proposed rules unless and until the SEC can demonstrate to investors that the financial data reported in XBRL format is at least as accurate and reliable as the financial information contained in the traditional financial reports. We wish to emphasize that we support the use of XBRL and similar technologies that may improve the delivery of financial information to investors and other market participants, but not when, as here, the innovation is accompanied by an unnecessary and unjustified weakening of investor protections.

The Council appreciates the opportunity to comment on the proposal. If you have any questions regarding this letter, please do not hesitate to contact me at [Andrey@cii.org](mailto:Andrey@cii.org) or 202.261.7089.

Sincerely,

A handwritten signature in black ink, reading "Andrey V. Kuznetsov". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Andrey Kuznetsov  
Research Analyst