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January 22, 2008

Submitted via [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

RE: File Number S7-27-07, State Sponsors of Terrorism Tool  
72 Federal Register 65862 (November 23, 2007)

Dear Ms. Morris:

The American Bankers Association (ABA) appreciates the opportunity to submit this letter in response to the Concept Release issued by the Securities and Exchange Commission (Commission) on November 23, 2007. The release seeks comment on whether to develop a tool to assist investors seeking to review companies' disclosures regarding business activities in or with any of the five State Department-designated State Sponsors of Terrorism (SST).

The American Bankers Association unites community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks under one association that works to enhance the competitiveness of the nation's banking industry. Its members – the majority of which are banks with less than \$125 million in assets – represent over 95 percent of the industry's \$12.7 trillion in assets and employ over 2 million men and women.

#### Summary

The ABA urges the Commission to abandon the concept of developing and hosting an Internet based tool dedicated to the enhanced disclosure of business activity related to countries designated as SSTs. In an age when investor created tools for capturing publicly available information are rapidly expanding, injecting a selective interpretation into the Commission's disclosure regime under the guise of a "web tool" may very well mislead investors to believe that the companies profiled on the web tool are, in fact, bad corporate actors. Should the Commission determine that it is appropriate for investors to have access to this information, we believe that data tagging, applied judiciously, may present a more appropriate mechanism for satisfying investor demand. We note, however, as we discuss more fully below, that data tagging of this information also injects to some degree a "value-based judgment" in that it prioritizes data tagging of companies doing business with SSTs over other activities that may be of more relevant interest to investors.

#### Background

On June 25, 2007, the Commission added a feature to its Web site that provided direct access to public companies' 2006 annual report disclosures concerning past, current or anticipated business activities in or with one or more of the countries designated by the

Secretary of State as a SST. On July 20, 2007, the Commission suspended the web tool, indicating that the Commission staff would consider whether to recommend a Concept Release on the question of how best to make public company disclosure of business activities in or with a SST more accessible. On November 23, 2007, the Commission issued its Concept Release to which this letter responds.

According to the Concept Release, the original web tool was the result of a staff review of company disclosures that included any reference to such a SST and that the disclosure review process was intended to exclude references made to unrelated company activities in or with any of these countries (e.g., generic references to a SST; references to a SST in the context of an executive officer's or director's experience and educational background; or generic descriptions of risk associated with the possibility of war). The Concept Release notes that the web tool permitted the exclusion of companies whose disclosures stated that they did not conduct business in or with SSTs. Unfortunately, several financial institutions appeared on the Commission's web tool list, even though their disclosures were fundamentally descriptions of their efforts to monitor and/or prevent transactions by their customers with such SSTs.

In other situations, financial institution disclosures indicated that the company was actively conducting a risk assessment of its activities, including monitoring of any potential activities relating to any one of the SSTs. Further, where the disclosures indicated that business activities with a particular SST existed, there may have been further clarifying information that the activity did not reach levels of materiality or that the relationship had been established pursuant to licensing arrangements through the Department of Treasury's Office of Foreign Assets Control (OFAC).

### Discussion

The Concept Release requests comments to specific questions that are addressed by ABA as follows:

**First: The SEC should not provide enhanced access to business activities in connection with a State Sponsor of Terrorism or other substantive business activities.**

As the Commission notes in its Concept Release, the federal securities laws do not impose a specific disclosure requirement that addresses business activities in or with a country based upon its designation as a SST. Rather the disclosure obligations are based on standards of materiality, i.e., a substantial likelihood that the information is important to the reasonable investor in making an investment decision. However, this materiality standard does not help determine whether the Commission should provide "enhanced" access to such information. The issues that influence investor choice about an institution's business activity vary widely, and there is no market-based reason to prefer one over another. Some investors feel strongly about activities supporting gambling enterprises, others oppose those businesses generating excessive greenhouse gases, still other investors avoid companies that are not unionized, while others avoid companies that are unionized.

While some investors may consider that terrorist financing interests are sufficiently special to deserve this particular intervention,<sup>1</sup> the Commission should recognize that in

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<sup>1</sup> According to the Concept Release, the Commission was motivated, in part, to develop a SST web tool based on state pension plan entreaties. While state pension plans are generally not subject to ERISA, we note that many state laws parallel ERISA Section 404(a)(1)(A) which requires plan fiduciaries to act solely in the interest of participants and beneficiaries and for the exclusive purpose of paying benefits and defraying reasonable administrative expenses. The DOL has stated that this provision of ERISA precludes plan fiduciaries from "us[ing] ... plan assets to promote particular...public policy positions that have no connection to the payment of benefits or plan administrative expenses. See e.g., Department of Labor Advisory Opinion 2007-07A

the world of multi-national enterprises, the U.S. identification of the SSTs in question is not without considerable controversy. U.S. foreign policy perspectives which have led to the designation of these countries as SSTs are not necessarily those of other nations and should not be reflective of permissible business conducted by multi-national enterprises. One such example is the designation of Cuba as a SST by the U.S. Cuba maintains a variety of relationships with other nations, including engaging in certain permissible financial transactions with a nation's financial institutions which simultaneously also are public companies operating in the U.S. As the Commission itself recognizes, it does not have the expertise or resources to determine which public company business activities are supporting terrorism and/or are inconsistent with U.S. foreign policy. It is not reasonable to assume, however, that the placing of a company on a list is not without investor impact, even if it is so placed merely because the name of an SST appears in its documents. This latter is a detail that may be lost on a significant number of investors. Properly distinguishing across the content of disclosures made about business activity relating to SSTs demands extensive analysis, analysis that is not intended to be part of the SEC exercise, a factor that may not be readily apparent to investors who see the name of a company on an SEC list.

There is simply no basis for the Commission to dedicate special resources to a particular type of taboo business activity. The establishment of a list of entities with some kind of unanalyzed business connection to an SST would have a detrimental impact on the reputation risk of banks and could cause investors to have unfounded concerns.

**Second: Public sources of information about material business activity in connection with State Sponsors of Terrorism are readily available.**

A Commission decision not to develop and implement the proposed web tool will not affect the ability of investors to gather information about companies involved in meaningful business activities with SSTs. Currently investors have the capability to review information provided by companies regarding their business activities through utilization of the EDGAR system, which has been enhanced to allow advanced full text searches. Although the Commission seeks to ease the burden on investors by simplifying the location and access to this information to one source, easing access to narrowly tailored information that lacks appropriate context by a U.S. government agency could be quite detrimental to the reputation of a company and stock valuation. An SEC imprimatur on a data search has more reputational impact than a Google search.

Consideration should also be given to other available sources of public information. One such resource is OFAC's Country Sanctions Program list, which includes the five countries designated as SSTs, namely Cuba, Iran, North Korea, Sudan and Syria. OFAC also details the Executive Order prohibiting certain transactions and relationships, as well as the permissible activities including general license requirements. Furthermore, OFAC publishes a monthly list of enforcement actions, identifying entities that have violated the prohibitions, detailing the precise activity giving rise to the enforcement action. It is important to keep in mind that investors still have the opportunity to review OFAC enforcement actions and cross-reference the information utilizing the search functionality of the EDGAR system, thereby allowing investors and other market participants to gather sufficient information to reach a conclusion on their investment interests.

**Third: A Commission web tool applying staff analysis should not be reinstated in any form.**

The Commission acknowledges in the Concept Release that the most difficult challenge would be dedicating staff resources to updating the information to keep up with newly filed disclosures and to keep the tool populated with current and timely information. As

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(December 21, 2007); Letter from Alan Lebowitz, Deputy Assistant Secretary, Department of Labor to Jonathan P. Hiatt, General Counsel, AFL-CIO (May 3, 2005).

discussed above, reliance solely on a Commission web tool based on less than current public filings without dedicating resources to conduct additional review of the context and nature of the disclosures will materially harm the institution's reputation.

While ABA agrees that the methodology used to select the companies and the frequency of updates can be better than that used in June 2007, it still cannot be good enough; the implication remains that the Commission, through its web tool, is making a value judgment about the appropriateness of investing in the companies listed. By exercising any judgment about whether the public statements are or are not describing activity that merit selection for inclusion in the web listing, the Commission is implicitly signaling that it, as agency of the U.S. government, has made an expert evaluation of the public filings that should be separately considered by the investing public.

**Fourth: While the sequence of data tagging information contained in public filings may improperly suggest that the initial information tagged is more important than information later tagged, requiring companies to use data tags may be a less harmful option, should the Commission determine to move forward on this initiative.**

The selection of certain information for data tagging over other information necessarily still implies a value judgment that the first information tagged is more important than information that is not tagged or is slated for tagging at some later date. We urge the Commission to consider this in determining whether to move forward on data tagging of public company information related to SSTs. It goes without saying that investors are not all of one mind. Rather than be concerned about public companies engaged in business activities in SSTs, investors may prefer to know that a public company is engaged in the production of tobacco products or certain controversial pharmaceuticals or doing business with countries that have negative trade balances with the U.S.

Nevertheless, should the Commission determine to move forward with its project, the ABA would encourage the Commission to consider utilizing data tags, computer labels written in XBRL, as a means of identifying information relevant for disclosure. While we remain concerned regarding the identification of potentially innocent transactions and relationships that are tagged based on keywords and references rather than the true nature of the conduct or relationship, we take comfort in the fact that it is the companies themselves that will be assigning the data tags to the relevant information and that the most current information will be tagged. Moreover, we would recommend that the development of any data tags regarding business activities in SSTs be limited to material information concerning actual business activities with SSTs. Irrelevant or marginal references to SSTs should not be captured by, or come within the scope of, the data tags.

Although XBRL is currently used in SEC filings by fewer than one hundred SEC registrants, we would also urge the Commission to be mindful of the potential cost and resource burdens associated with data tagging SST information. In addition, the industry has concerns over potential audit costs to test their data tagging systems and methodology. We would be happy to work with the Commission to address these and other concerns should the Commission determine that data tagging is appropriate with respect to the disclosure of public company business activities in SSTs.

#### Conclusion

The ABA urges the Commission to abandon the concept of a web tool dedicated to the enhanced disclosure of business activity related to countries designated as State Sponsors of Terrorism revealed by public filings. The potential for erroneous information, misinterpretation, and stagnant information outweighs any tangible benefit an investor may find in the information provided through this tool, information which is otherwise and more appropriately available through public Web sites and information. Consideration

should also be given to the resource dedication by the Commission staff, weighed against any potential benefits received from consolidation of the information on a Commission web page. As discussed above, should the Commission determine that this information should be made available to investors through the use of XBRL data tagging, we would welcome the opportunity to work with the industry in developing appropriate data tags.

Respectfully submitted,

A handwritten signature in black ink, reading "Sepideh Behram". The signature is written in a cursive, flowing style.

Sepideh Behram  
Senior Compliance Counsel, Center for Regulatory Compliance