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CITY BAR**

**COMMITTEE ON  
FINANCIAL REPORTING**

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VIA EMAIL TO [RULE-COMMENTS@SEC.GOV](mailto:RULE-COMMENTS@SEC.GOV)  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Subject: File Number S7-11-08

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Financial Reporting of The Association of the Bar of The City of New York (the "Committee") in response to Release No. 33-8924, Interactive Data to Improve Financial Reporting (the "Release") of the Securities and Exchange Commission (the "Commission"). Our Committee is composed of lawyers with diverse perspectives on financial reporting matters, including members of law firms and counsel at major corporations, financial institutions, public accounting firms and institutional investors. A list of members of the Committee is attached as Annex A to this letter<sup>1</sup>.

Our Committee supports the Commission's efforts to improve the timeliness and accuracy of financial disclosure and analysis of filings with the Commission through the use of interactive data. The Commission's voluntary filer program started in 2005 has been particularly beneficial in permitting issuers to develop and test their use of interactive data tagging prior to it being mandated. It has also allowed investors to familiarize themselves with interactive data as an analytical tool. The roundtables hosted by the Commission on the topic of interactive data in financial reporting also have helped identify the issues with mandatory use of interactive data and the challenges associated with its implementation.

However, our Committee believes that many reporting companies are not currently prepared to meet the aggressive timetable for implementation proposed by the Commission

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<sup>1</sup> This letter does not necessarily reflect the individual views of each member of the Committee or of the institutions with which they are affiliated.

without the expenditure of an amount of time and other resources that would outweigh the benefit to investors. With this in mind, we offer the following suggestions, which we believe will not unduly delay the implementation of mandatory interactive data, but will result in a more orderly and cost effective implementation.

### **Phase-In Schedule**

Some members of our Committee expressed support for an incremental phase-in schedule, by permitting the initial interactive data file submitted to relate to interim Quarterly Reports on Form 10-Q prior to requiring the submission with the more complex and complete Annual Reports on Form 10-K. However, a majority of our Committee members felt that it would be more productive to initially complete the process for the Annual Report, even though this would present the greatest initial challenge; this is because most of the issues faced with Quarterly Reports would already have been addressed in the course of preparing the interactive data file for the Annual Report. However, we believe starting with the Annual Report will require a greater initial effort and suggest the Commission extend the one-time initial filing grace period to 60 days rather than the 30 days proposed by the Commission. Similarly, we suggest that the second year footnote tagging requirement, which will involve a significantly greater incremental effort, also have an even longer 90-day initial filing grace period.

### **Foreign Private Issuers**

Our Committee believes all foreign private issuers that are to be subject to the requirement that they produce interactive data should be treated equally and required to furnish interactive data only in the third year of the phase-in period. Many foreign private issuers that are filing US GAAP financial statements also prepare their primary financial statements in accordance with local GAAP or IFRS and file these with local exchanges or regulatory authorities and distribute to shareholders. We do not believe that these foreign private issuers, regardless of size, should be required to undertake the additional burden of preparing and furnishing interactive data until the third year. Therefore, we suggest that the Commission clarify that the first two phase-in periods would only apply to foreign private issuers that prepare their primary financial statements in accordance with US GAAP.

Furthermore, we believe that the development of the IFRS list of tags' content by the International Accounting Standards Committee Foundation and collaboration with XBRL U.S. and other parties to align practices and technology have not progressed to a point where a definitive compliance date should be set by the Commission. We suggest that the Commission encourage foreign private issuers preparing their financial statements in accordance with IFRS to join the voluntary filer program, but delay any firm effective date.

### **Initial Public Offerings**

The Commission has proposed that, subject to the phase-in period, all registration statements filed under the Securities Act, including initial public offerings, be required to include interactive data when financial statements are included directly in the registration statement, rather than being incorporated by reference. Our Committee requests that the Commission reconsider this position. In connection with the implementation of Section 404 of Sarbanes-

Oxley, Rules 13a-15 and 15d-15 under the Securities Exchange Act allowed issuers to wait until after the end of the fiscal year following their initial public offering before they were required to evaluate and certify as to their internal control over financial reporting. We believe that the effort required to prepare and furnish interactive data should be recognized and similar treatment for interactive data submission should be afforded these issuers.

### **Furnished vs. Filed**

We support the Commission's proposal that an Interactive Data File will be deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 and 12 of the Securities Act and also deemed not filed for purposes of Section 18 of the Securities Exchange Act, and otherwise not subject to liability under those sections.

### **Officer Certification**

Our Committee supports the proposed exclusion of the XBRL exhibit from officer certification under Rules 13a-15 and 15d-15. We believe that to require certification for the exhibit would result in increased expense and exposure without any commensurate investor benefit.

### **Liability Issues**

We suggest that the Commission consider phasing in levels of liability for interactive data over time. This will be an entirely new process for all public companies, other than the 76 issuers that have participated in the voluntary program. As such, we suggest that an appropriate approach would be to have any liability provisions delayed until the second year or even the third year. We do not believe that this would result in any less reliable information being available to investors during this period.

Regardless of whether the Commission decides to delay or phase in liability for interactive data, we do not believe the liability for interactive data should be the same as it is for XBRL-Related Documents under the voluntary filer program and should not be as proposed in the Release. For example, we do not believe Section 18 liability should attach to such data that is deemed "filed" in Annual Reports on Form 10-K. We believe that the Section 18 liability standard applicable to "any person who [makes] or cause to be made any statement in any application, report or document filed . . . false or misleading with respect to any material fact" is not appropriate for a new electronic tagging system. We note that information presented in satisfaction of Items 1, 2 and 3 of Form 10-Q is deemed "furnished" with no Section 18 liability and believe Annual Reports on Form 10-K and registration statements should be treated similarly with respect to supplemental interactive data tagging information.

We also do not believe Rule 10b-5 liability should attach to the XBRL submission proposed to be "furnished" to the Commission. XBRL tags are a new requirement unfamiliar to most of the thousands of issuers that did not participate in the voluntary filer program. Rule 10b-5 liability would create exactly the "undue fear of mis-tagging" the Commission seeks to avoid. Further, the interactive data tags are meant to improve the speed and accuracy of cataloguing, searching and analyzing financial information, not to provide additional substantive disclosure and potential liability. Thus, we believe there is no need for subjecting interactive data to Rule

10b-5 liability. In addition, the Rule 10b-5 liability aspect of the proposal would make interactive data tagging much more onerous to companies, who may feel compelled to implement verification procedures that would be unduly costly and burdensome to avoid being drawn into unnecessary litigation over inadvertent tagging errors. Finally, we note that the Call Reports now submitted in XBRL format as a result of the FDIC's Call Report Modernization Initiative do not have this extra layer of liability and related civil litigation risk.

### **SEC Resources and Process Transparency**

We suggest that in the adopting release the Commission clarify what resources it will make available to issuers in connection with interactive data. Issuers will have many questions in connection with their initial filings and would welcome meaningful Commission guidance. In particular, we believe questions will arise around the issue of permissible extensions.

We note that the Release discusses the validation process the Commission has applied to the voluntary program and the validation software it expects to apply when interactive data submissions become mandatory. To avoid unnecessary efforts on the part of company personnel and the Commission's staff, we suggest that the Commission provide as much visibility as possible into this screening process and the rejection threshold, including making the validation software fully assessable to companies through the test filing process, identifying not only major and minor errors, but also data tags that would be flagged and brought to the staff's attention.

### **Other Issues**

***Web site Posting.*** In the Release, the Commission states: "To help further our goals of decreasing user cost and increasing availability, we do not propose to allow companies to comply with the Web posting requirement by including a hyperlink to the documents available electronically on the Commission's Web site." We request the Commission reconsider this position. We see no benefit and unnecessary expense in requiring companies to duplicate information already available on the Commission's Web site.

***No Auditor or Third Party Report or Certification.*** The Committee supports the Commission in not requiring any third party report or certification of the Interactive Data File. We recognize that interactive data will be used by investors and may over time become as important as the audited financial statements. However, we believe that a requirement of a third party report or certification would be unduly costly and burdensome at this stage. We suggest that in the adopting release the Commission provide specific guidance to issuers as to how the preparation of interactive data should become a part of disclosure controls and procedures and internal control over financial reporting.

***Impact of Non-Compliance.*** We note that the Commission proposes that if a filer does not provide the required interactive data submission or post the interactive data on the company Web sites, by the required due date, the filer would be unable, for so long as the interactive data are not provided, to use short form registration statements on Forms S-3, F-3 or S-8. Likewise, the filer would be deemed not to have available adequate current public information for purposes of Rule 144. The Committee believes that these consequences are excessively harsh. The underlying financial information in the traditional format remains available to the investing

public, regardless of whether the interactive data is submitted to the Commission or posted. We suggest that the Commission reconsider its position and at least delay a decision on the consequences of non-compliance until after at least one year of mandatory filings, to determine if it is a matter of genuine concern. Alternatively, the Commission could establish a materiality standard to avoid inadvertent technical violations.

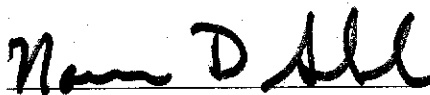
*Additional Data.* At this time, the Committee does not believe that interactive data for executive compensation disclosure, Management's Discussion and Analysis, or other financial, statistical or narrative disclosure, given the extent of the related costs and associated questions, would be a net benefit. However, we do applaud the Commission's efforts in developing the interactive data available on the Executive Compensation Reader, which has served as a valuable learning tool to educate investors with the benefits of interactive data.

*Voluntary Program.* We note that the Commission proposes to modify the voluntary program to permit investment companies to participate, but to exclude non-investment company participation. Given the benefits of interactive data as an analytical tool for investors, we believe that the Commission should modify the voluntary program to permit any company to submit voluntarily interactive data format information, even if not required to do so.

**Conclusion**

We commend the Commission for its efforts to improve the timeliness and accuracy of financial disclosure and analysis of filings with the Commission through the use of interactive data. We encourage the Commission to take our comments into consideration in formulating its final rule. Members of the Committee would be pleased to answer any questions you may have concerning our comments.

Respectfully submitted,



Norman D. Slonaker, Chair  
Financial Reporting Committee  
Association of the Bar of the City of New York

cc: Securities and Exchange Commission  
Hon. Christopher Cox, Chairman  
Hon. Paul S. Atkins, Commissioner  
Hon. Kathleen L. Casey, Commissioner  
Hon. Elisse B. Walter, Commissioner

Securities and Exchange Commission – Division of Corporation Finance  
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Securities and Exchange Commission – Office of Chief Accountant  
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