

**Securities Industry Association**

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April 24, 1997

Mr. Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-6009

Re: Plain English Disclosure
File No. S7-3-97
Release No. 33-7380

Dear Mr. Katz:

The Capital Markets Committee of the Securities Industry Association ("**SIA**")¹ is pleased to respond to the solicitation of comments by the Securities and Exchange Commission in connection with the above-captioned release (the "**Release**").

A. OVERVIEW

Although we strongly support the goals underlying the SEC's plain English initiative, we do not support a number of the specific proposals set forth in the Release for implementing that initiative. Most notably, we cannot support a rule that would mandate plain English usage in prospectuses, as opposed to one that merely would recommend it.

We agree with the SEC that the language and readability of disclosure documents can and should be improved. We believe, however, that this goal can be achieved -- at much less cost and risk to investors, issuers and the capital-raising process -- by the SEC recommending plain English usage and voluntary efforts by issuers and others to act consistently with such recommendations. As an example of how voluntary efforts can achieve these goals, we refer to a number of recent SIA and industry initiatives in this area, particularly regarding investor education.

As the Commission knows, the SIA has launched a number of initiatives to enhance the public's trust and confidence in the financial markets. Part of this effort involves publications designed to educate investors about market risks and opportunities (e.g., *Investor Topics*, *SIA's Your Guide To Understanding Investing*, and *Investor Education Handbook*). These publications are being widely circulated and answer many of the most commonly asked questions about investing. SIA

also recently amended its bylaws and published guides (such as the *Best Practices Guide*), among other things, to encourage disclosure of clear, consistent and complete information to clients about the products and services that members offer, and the risks and rewards associated with investing and the capital markets. In addition, member firms have published a variety of materials and initiated innovative "home pages" on the Internet to educate their clients. These materials are increasingly being composed in "plain English" to ensure that the information firms communicate to the public is easy to grasp.

The recommendations in this letter are intended to help the Commission achieve a shared goal - clear, concise and understandable presentation of relevant information that investors need to make informed investment decisions. We would strongly support the goals of the SEC's plain English initiative if they are pursued on a voluntary basis, and we have a number of suggestions regarding the specific proposals in the Release that should reduce the chances of impeding the capital-raising process, exposing issuers unfairly to added liability, and depriving investors of relevant information.

For the reasons set forth more fully in this letter, we suggest that the SEC:

- **Recommend and not mandate the use of plain English in prospectuses** - taking into account that prospectuses, which expose issuers to absolute liability, are fundamentally different from other documents where plain English has been applied, and that determining whether language is plain is a subjective exercise with possibilities for inconsistent application;
- **Not require plain English for the entire prospectus** - at least until its use in more limited parts can be thoroughly tested;
- **Not require that the risk factors section be prioritized** - because it might mislead investors as to the ability to project contingencies with precision and cause them to focus on less than all material risks, and would unfairly expose issuers to liability;
- **Not impose artificial or arbitrary limitations on disclosure** - such as limiting the number of risk factors or number of pages in the risk factors section or prospectus summary, or prohibiting "boilerplate" or "generic" risk factors or complex and technical legal, scientific and business terms in all cases for all investors in all offerings; and
- **Not dictate any particular style** - by requiring or restricting any specific print type, color, font size, lettering or design, or otherwise reducing underwriters' ability to distinguish their "product" from that of their competitors.

B. THE CURRENT STATE OF PROSPECTUSES

We agree with the characterization of certain prospectuses in a recent report of an SEC task force as "turgid," "opaque" and "unreadable." ² There are a variety of reasons why many prospectuses are written in a legalistic and dense manner. One reason is the multiple purposes that prospectuses serve. Issuers and underwriters use prospectuses to impart required and other appropriate information to potential investors, and as the "record" of the complete disclosures made in relation to an offering. Underwriters also use the prospectus as a marketing document to solicit interest from potential investors. Investors use prospectuses to make an investment decision and also as their "record" of what was disclosed to them. Market participants, including research analysts and other securities professionals, use prospectuses

as additional sources of information about issuers and securities products. All of these uses, as well as the efficient market theory -- which generally posits that all the relevant information in the market is reflected in the price of the securities -- should be fully considered before adopting or amending any rules regarding the manner in which prospectuses are written.

Another reason that prospectuses often may require some effort to read is because disclosure is designed to satisfy regulatory requirements. The Securities Act of 1933 and the regulations and form requirements for registration statements promulgated under that statute are highly complex and detailed. These form requirements and regulations dictate much of the content of a prospectus. In addition, much of what is typically included in the prospectus has evolved out of comments to issuers from SEC corporation finance examiners during the review process.

We commend the SEC for including as part of its proposals a number of revisions to Regulation S-K and the registration forms. These changes should give issuers increased flexibility to make their prospectuses more readable.

C. RECOMMENDING RATHER THAN MANDATING PLAIN ENGLISH

In response to the SEC's specific request for comment as to whether it should mandate or only recommend the use of plain English in certain parts of the prospectus, we strongly believe that the SEC should only recommend plain English usage for the following reasons.

1. The Perils of Absolute Liability

Under Section 11 of the Securities Act, an issuer is subject to absolute liability if any part of the registration statement, when it becomes effective, contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements in it not misleading. No degree of prudence or good faith will absolve the issuer from liability for a Section 11 civil claim for damages. Although officers, directors, counsel, underwriters, accountants and other professionals that participate in the preparation of the prospectus and registration statement also are exposed to liability for misstatements or omissions, they can raise a "due diligence defense."

The prospectus, therefore, is fundamentally different from other documents that have adhered to a plain English format. For example, in the Release the SEC points to insurance companies simplifying insurance contracts, federal agencies drafting regulations and documents in plain English and Citibank using plain English promissory notes. A prospectus, however, is a unique descriptive document that sets forth a particular issuer's business for an audience of investors, as compared to a standard form contract which typically relates to one counter-party and contains generic provisions. Simplifying language in a contract exposes a contracting party to potential economic loss to a much lesser degree than simplifying the language of a prospectus. There is no requirement to include all material facts in a contract. If a contract fails to address a matter or addresses it unclearly, the parties can dispute who bears the risk or absorbs the loss. Moreover, a party can raise course of dealing or other equitable arguments about the enforcement of the contract.

We are not aware of any examples of plain English being required or even tested in the context of an absolute liability document. When the SEC encouraged plain English in the past, it generally did so outside the Section 11 liability context. For instance, to encourage less formal

disclosure in annual reports, the SEC permits a letter to investors from a company's chairman to be deemed to be a document that technically is not "filed" and, therefore, is not part of the prospectus, when the annual report is incorporated by reference in a registration statement. The chairman's letter, therefore, is not subject to Section 11 liability, but only Rule 10b-5 liability.

Outside the absolute liability context, issuers and underwriters do tend to write in plain English. Documents such as annual reports and research reports typically are written in a much more straightforward manner than prospectuses. We submit that a principal reason for this disparate writing style is the difference between absolute liability and general anti-fraud liability.

Given the absolute liability that attaches to a prospectus, it is more appropriate for the SEC to encourage plain English than to mandate it. An issuer facing absolute liability with respect to the contents of a prospectus should not be required to do more than meet substantive disclosure requirements with clear and concise language. Moreover, issuers and underwriters should be entitled to make the ultimate judgment relating to appropriate communication standards because they are most familiar with the relevant facts and circumstances, including the nature of the issuer's business and financial condition, the particular type of securities being offered, the sophistication of the anticipated investors, and the documents, transactions or events being described. We strongly believe that issuers -- as advised by counsel and other professionals and informed by investor demands and industry practices -- should retain the ability to determine appropriate disclosure, including whether and how to apply plain English recommendations to each offering.

2. Determining Whether Language Is Plain Necessarily Is Subjective

A second reason why recommending the use of plain English would be more appropriate than mandating it is because any interpretation of whether or not the words in a prospectus are in plain English necessarily is subjective. What is plain to one reader might not be plain to another. Regardless of how well the SEC articulates plain English principles or how comprehensive a handbook on plain English might be, the examiner reviewing a prospectus to determine if it is sufficiently plain will need to make countless subjective judgment calls. The SEC is not designed or equipped to regulate the use of the English language in this way. Nor do we believe it is a worthwhile endeavor for the SEC to engage in such an exercise.

If required to follow strict guidelines, there is a risk that issuers will begin using formulaic prose developed from "approved" prospectuses to expedite prospectus preparation and remove the uncertainty of potential delays in the review process. A new plain English "boilerplate" may develop that will do little to serve investors or, for that matter, the plain English initiative itself.

We also are concerned about the possibility for inconsistency in the application of the rules. The Release does not provide an explanation of how SEC staff will determine compliance with the proposed plain English requirements. We understand that the Division of Corporation Finance reviewed nearly 2000 registration statements in 1995. Clearly, many different staff members are involved in the review process, as well as thousands of issuers and the professionals they engage. Any mandatory requirements will inevitably lead to inconsistency and uncertainty for a considerable period of time as all of these parties address the necessary changes.

Another concern, based in part on the experiences of some of the volunteers in the pilot program, is that staff review for plain English may lengthen the overall review process and delay

an issuer's ability to access the capital markets at a beneficial time.

For the foregoing reasons, the SEC should only recommend and not require the use of plain English in certain parts of the prospectus. Even if the SEC decides to mandate rather than only recommend plain English usage, we do not believe that the staff should be permitted to delay effectiveness of a registration statement based on one examiner's subjective determination that it is not written in plain English.

D. LIMITED PLAIN ENGLISH USAGE SHOULD BE FULLY TESTED BEFORE EXTENDING IT TO THE ENTIRE PROSPECTUS

In response to the SEC's request for comment as to whether it should recommend the use of plain English for the entire prospectus, we urge the SEC to permit plain English usage to evolve slowly, after issuers, underwriters, investors and examiners can gain experience and become comfortable with its effectiveness in limited situations. If the SEC decides to require rather than merely recommend plain English usage, it should not expand this requirement beyond the cover page, prospectus summary and risk factors section until it is in a position to judge fully the merits of the use of plain English in these parts.

In our view, a fair test would require the SEC to analyze over a reasonable period of time, among other things: (i) how plain English is used in different types of transactions by different types of issuers with different investing audiences; (ii) whether the impact of its use in a bull market differs from its impact in a bear market; (iii) the experiences of SEC examiners in the review process, including how consistently examiners are in applying the rules and the degree to which delays result; and (iv) any negative consequences that result from the use of plain English in parts of the prospectus or its use voluntarily in the entire prospectus, such as investor confusion, the omission of material information or changes in the liability imposed on issuers and securities professionals.

We also urge the SEC to exercise caution before applying any experiences with plain English usage in the context of investment company prospectuses to other prospectuses. Investment companies are more in control of the terms being described in the disclosure document. For example, a mutual fund sets many of its own terms and defines exactly what the investment will be, such as the fund's investment objective, redemption procedures, and the like. Given that mutual fund disclosure is essentially related to a closed environment where the self-defined vehicle can readily identify the features and risks, we believe it would be erroneous to assume that the same formulaic disclosure rules could appropriately be applied to an industrial issuer whose business, operations, expectations, risks and rewards are effectively subject to unlimited variations in extrinsic factors over which it often exercises no control. Moreover, much of the detailed disclosure for mutual funds is substantially augmented by an extensiveparate summary of additional information.

E. CONSEQUENCES OF PRIORITIZING THE RISK FACTOR SECTION

The Commission states in the Release that "plain English does not mean leaving out anything important or material." Some of the proposals in the Release, however, clearly go beyond writing in a plain style. The Commission proposes some changes to the risk factors section, for example, that could prove harmful from an investor's perspective.

In another part of this letter, we provide our views on prohibiting boilerplate or generic risk factors and limiting the risk factors section either in terms of the number of factors or the number of pages. In this part, we discuss the proposal to require that risk factors be in plain English and listed in the order of their importance.

We support the proposal to use plain English principles in the risk factors section. Generally, we do not believe that writing in plain English *per se* will expose issuers to greater liability. We firmly believe, however, that the proposal to require issuers to list risk factors in order of importance is inappropriate. In our opinion, such a requirement would not only expose companies to greater liability, but also result in investors being misled and encouraged to consider less than all the material risks.

Our experiences with securities litigation and related negotiations with plaintiffs attorneys leaves little doubt that any requirement to prioritize risk factors will result in increased exposure to liability, absent some sort of safe harbor protection. A plaintiff in a securities suit, for instance, even after admitting that an issuer properly included all material risks in the prospectus conceivably could still bring an action for failure to prioritize the risks correctly. A risk presented near the end of the section could materialize as the one risk that causes the investment to perform less well than the investor expected. We are concerned in this instance that the investor could argue -- with the benefit of hindsight -- that the particular risk should have been disclosed higher on the list or should have been number one on the list. Notwithstanding proper disclosure of all appropriate risks, investors -- in response to any disappointing results -- might use the proposed requirement to confound issue with Section 11 actions for failure to prioritize the risks in the best order, as judged after the fact. Regardless of the ability or likelihood of ultimately prevailing on the merits, issuers and others involved in the preparation of prospectuses may settle the law suits at substantial cost, to avoid an expensive and protracted discovery process or the expected business distraction. All of this would inflate the cost of raising capital.

Apart from liability, a requirement to prioritize risk factors could result in investors being misled. Such a requirement could suggest to investors that risks appearing near the bottom of the list are less important or likely to occur than those near the top. Investors might also interpret the requirement as proof that risks can be predicted with precision. In fact, the disclosure of material risks is a highly involved exercise. Participants in the prospectus drafting process typically spend a significant amount of time analyzing the magnitude of risk and the likelihood of that risk occurring. It is often difficult and sometimes impossible for those directly involved in the process to agree entirely on the relative importance of the various risks and contingencies.

Given the process and nature of disclosing risk factors, it would be entirely inappropriate to require prioritization. Investors should not be led to believe that risks can be forecast with any certainty. They should pay as much attention to risks near the bottom of the list as to those near the top. Investors should be encouraged to consider carefully all risks that an issuer and its professionals, upon analyzing the magnitude and probability of occurrence, determine to include in the risk factors section.

F. DISADVANTAGES OF ARTIFICIAL AND ARBITRARY LIMITATIONS

The Release includes a proposal to prohibit "boilerplate" or "generic" risk factors and "legal

jargon or highly technical business terms." The SEC also solicits comment on whether it should limit the number of pages of the prospectus summary or risk factors section or limit the number of risks that an issuer may include.

We view each of these proposals as artificial and arbitrary. We explain below why these limitations are inappropriate, even if the SEC only recommends rather than mandates plain English usage.

1. Prohibiting Boilerplate or Generic Risk Factors

The SEC proposes in the Release to prohibit "generic" and "boilerplate" risks because they do not provide meaningful information to investors. We discern three potential problems with the proposed prohibition. The first is that the SEC does not provide sufficient guidance as to the meaning of "boilerplate" in terms of risk factors. As with plain English generally, deciding which risk is "boilerplate" requires a subjective determination. Absent more specific guidance, there is a danger that issuers may err on the side of omitting a risk that they otherwise deem to be material to investors because of uncertainty as to whether SEC staff would view the risk as boilerplate.

A second potential problem is increased exposure to liability. Regardless of whether a so-called "generic" factor could apply to any company or any offering, if an issuer fails to disclose that risk, it could face liability for a material omission. An investor could argue with the benefit of hindsight that the omitted risk, though generic, was the contingency that caused the investment to perform less well than expected. We believe it is patently unfair to expose issuers and related professionals to Section 11 liability by prohibiting them from disclosing generic risks, without any safe harbor or other protection against liability.

The final problem is the lack of consideration for the individual investor. A particular risk factor or set of factors may be boilerplate or generic from the point of view of an issuer, underwriters, legal counsel or SEC staff because each has seen the disclosure in a large number of offerings for a variety of issuers. From the perspective of the individual investor, however, the factor may be anything but boilerplate.

Perhaps an investor, who has never invested in an offering or read through a risk factors section in any prospectus, might be investing a large portion of his or her portfolio in the offered securities and, as part of an investment decision, needs to have the benefit of evaluating all the potential contingencies that could affect that investment. This type of individual investor should not be denied the benefit of such full disclosure simply because the risk factors are viewed as boilerplate or generic from the perspective of those more practiced in the offering process.

2. Restricting the Number of Pages or Length of the Prospectus Summary or Risk Factors Section

Although the SEC proposes to amend the current regulation to require that the summary section simply be brief, it also solicits comment on whether the prospectus summary should be limited to a specific number of pages. Similarly, the SEC asks whether, for example, it should limit the number of risk factors to eight or limit the risk factors section to two pages.

Much like our view on prohibitions regarding boilerplate and generic risk factors, we believe that

these limitations are arbitrary and inappropriate. The risk factors and summary sections are two of the most critical parts of a prospectus for many investors. For some, it may be the only sections they read. The Commission should neither require the sections to be brief, nor dictate a specific length.

Each issuer and each offering has at least some unique aspects. Issuers and related professionals must make a transaction-specific and issuer-specific determination as to whether to include a summary, what information to include in the summary (if one is included) and which risks to highlight for investors. The SEC should not attempt to apply a one-size-fits-all rule without regard to these different sets of facts and circumstances.

Imposing artificial limits on the length of these sections also could result in some unintended consequences. For one, issuers might be forced to omit disclosure from the summary or risk factors section that they might otherwise have deemed to be material and included. Some of this information could be important to an investor.

Additionally, many market participants rely on the summary as a roadmap and guide to the terms of the offering or as a quick way to refresh their recollection about disclosure they may previously have read in other parts of the prospectus. The SEC's discouragement of cross-references may reduce the utility of the summary for such purposes.

Finally, as described above, a prospectus subjects an issuer to absolute liability. Unless the SEC is prepared to adopt a safe harbor to protect issuers, it should not hamper a company's ability to describe all risks that the company and related professional experts deem appropriate to disclose by imposing arbitrary or artificial restrictions on the number of risks or the length of the section.

3. Prohibiting Complex and Technical Legal, Scientific and Business Terms

We also believe that prohibiting the use of all legal jargon and technical business terms in all contexts is inadvisable. Such a prohibition would expose issuers to greater liability and result in the omission of certain information that some investors may want, especially if plain English is required in the entire prospectus.

A number of matters described in a prospectus may not lend themselves to plain English disclosure or may represent areas for which investors prefer to see more precise language. Many complex matters simply cannot be explained in plain, everyday language. The items that come readily to mind include: disclosure about complicated derivative transactions; asset securitizations; novel, hybrid and indexed securities products; investment-grade and high-yield debt securities; tax or ERISA matters; potential liability under environmental laws; complex litigation; and detailed accounting issues. In short, the complex terminology used in the prospectus in many cases is less the result of poor drafting and more the result of the subject matter itself -- including the nature of the transaction described, the type of securities offered, the nature of the issuer's business and other pertinent facts and circumstances.

Some governing documents must be described in a prospectus and, yet, themselves may not be written in plain English. It is possible that only the exact language of the document can convey the intended meaning. Frequently, the language in a form of agreement has evolved over the course of many years, chiseled into shape by industry usage and custom, common law

decisions and statutory law. Requiring that such language be rewritten is fraught with the possibility that important nuances will be lost.

Quite simply, a prospectus drafter -- in trying to paraphrase highly legalistic, scientific or complex business terms -- runs a significant risk of distorting the information and ultimately miscommunicating with investors.

All of this could lead to a number of negative consequences. One possible result is that issuers and related professionals will be subject to greater liability for prospectus descriptions that differ from the governing instruments. A further consequence is the possible omission of useful information. Preventing the use of technical business terms, for example, could make it difficult to describe fully the strategic advantages of an issuer in a highly technical field, such as biotechnology or telecommunications, which in turn may lead to the investor receiving incomplete information.

Furthermore, certain types of investors, especially institutions, have expressed an interest in having the prospectus set forth the precise terms of the governing document. Some investors prefer, for instance, to see the restrictive covenants as they appear in the indenture, not as they may be interpreted and paraphrased in a plainly written prospectus. They have a number of reasons for this preference. First, these investors may be more familiar with the covenant as stated in the indenture. Second, they may choose to rely on the prospectus rather than reading the entire indenture.

For the foregoing reasons, we believe that, if the SEC requires plain English usage rather than simply recommending it, the prohibition against legal jargon and highly technical business terms should be deleted or changed to a recommendation. At most, the SEC should require that such language be used minimally or limited as much as practicable in the prospectus.

G. IMPORTANCE OF PRESERVING FLEXIBILITY FOR UNIQUE PROSPECTUS STYLES

The SEC should not impose limitations on purely stylistic features of a prospectus. Underwriters use prospectuses as an integral part of their marketing efforts. Many underwriters have developed and cultivated over a long period of time a distinctive prospectus style, and have "style manuals" that specify the design features of the prospectuses that they produce. This is particularly true with respect to the cover page, which allows the public at a glance to identify the offering's underwriter. It is important to underwriters and the investing public that all prospectuses not be forced to shed their singular qualities in the name of plain English.

Given the utility of brand identity, it is crucial that the SEC neither require a specific print or font size or color, nor prohibit the use of italics or other distinctive lettering or design that identifies the underwriter to investors. As long as the overall prospectus design is clear and uncluttered, underwriters should retain the ability to allow the public to distinguish their "product" from that of their competitors.

H. ADDITIONAL SUGGESTIONS

1. Revisions to Regulation S-K and Form Requirements

We commend the SEC for proposing changes to Regulation S-K and the registration form requirements to amend some of requirements for font size, capitalization, cross-references and

other elements. The proposed revisions are welcomed changes that will give companies flexibility to make prospectuses more readable.

We support almost all the revisions. The only proposal we suggest that the SEC modify is the requirement that the table of contents be set forth on the inside front cover page or immediately following the cover page. The SEC questions in the Release whether a reader goes to the back of the document first to locate a guide to the document. We recommend that companies be given the option of including the table of contents either on the inside of the front cover page or the back cover page. We believe that many investors do look to the back cover page because a significant number of underwriters follow the convention of placing the table of contents there. Moreover, when mailing prospectuses to their customers, underwriters often fold the prospectuses in a manner that results in the back cover page being the first thing that the reader sees. Furthermore, including the table of contents on the back cover facilitates prospectus printing. If the SEC is still concerned about investor confusion, we suggest that it merely require a cross-reference to the table of contents on the inside front cover page.

2. Coordination between SEC and States

Some of the language in and design of prospectuses results from state securities law requirements. For example, a number of states require that certain specific legends be included, sometimes in all capital letters or in a specific font size. It would be helpful if the SEC would work with state securities regulators to coordinate prospectus requirements in conjunction with the SEC's plain English initiative.

3. Cost-Benefit Analysis

In response to the SEC's request for comments on its cost-benefit analysis, we respectfully suggest that the SEC re-assess some of its findings. First, we are unable to concur with the statement in the Release that the proposals should result in little additional cost as issuers implement the organizational, language and document structure changes necessary to comply with the proposals and that such costs would only be incurred in the short term. The style and contents of prospectuses have evolved over a number of years, borrowing upon earlier versions and disclosure. A significant change in the contents and design of prospectuses will require a substantial amount of time and effort on the part of issuers and the professionals they engage to help them prepare prospectuses. This added time and effort necessarily will result in increased legal fees and business opportunity costs that are expected to be more than inconsequential.

Mandatory plain English will lead to inconsistency during and uncertainty over the review process for a considerable period of time. It is likely that the review process will be prolonged as SEC staff begins working with the new rules and testing their application in particular offerings. To avoid the uncertainty as to how the new requirements will be implemented or how individual staff members may apply the rules, some issuers might opt to raise capital offshore or in private placements. The SEC's Division of Corporation Finance has a finite amount of resources. A plain English initiative necessarily will divert some of those resources and shift some of the staff's focus from substance to form. All these actions would result in a higher cost of capital and may have unintended consequences for investors.

Second, we do not agree with the statement in the Release that the proposals should cause

some printing and other cost savings in preparing prospectuses. A number of the changes, such as increasing the amount of "white space," omitting or substantially reducing defined terms and cross-references and prohibiting legal and technical terms, may well result in an increase in the length of prospectuses. This would increase the cost of printing and distributing prospectuses.

Any such inflated costs will be exacerbated to the extent that the SEC mandates rather than merely recommends plain English and to the extent that the SEC imposes any such requirement on parts of the prospectus in addition to the cover page and the summary and risk factors sections.

I. CONCLUSION

We support the goals underlying the plain English initiative. For the reasons described above, however, we firmly believe that the SEC should recommend rather than mandate the use of plain English, not require plain English usage for the entire prospectus at this stage, not require that risk factors be set forth in order of importance, not impose artificial or arbitrary limitations on disclosure and not dictate any particular prospectus style.

We believe that the goals of the plain English initiative can be achieved at a lower cost and with less potential harm to investors, issuers and capital formation if it is done on a voluntary basis. SIA and its members have made substantial voluntary efforts to educate investors about the risks and rewards of investing and the information investors should have to make an informed investment decision. Further voluntary steps consistent with the goals of plain English would complement these efforts.

The transactions completed to date as part of the SEC's voluntary plain English pilot program do not provide sufficient experience from which to impose a change as far-reaching as mandatory plain English. A rule recommending rather than requiring plain English usage would allow the SEC to gain more information and experience in this area without impairing the capital-raising process.

We strongly believe that issuers -- as advised by counsel and other professionals and informed by investor demand and industry practice -- should retain the ability to make appropriate disclosure determinations and that this responsibility to public investors not be obscured with a plain English requirement.

We would be pleased to work with the Commission to implement plain English principles along the lines recommended in this letter. We share the SEC's interest in and commitment to the goals of educating investors about the risks and rewards of investing and the capital markets and making prospectuses and other forms of disclosure easier to read and understand.

Should you have any questions regarding this letter, please do not hesitate to contact the undersigned at 212-761-6686 or Mark A. Egert, SIA Staff Adviser to the Capital Markets Committee, at 212-618-0508.

Very truly yours,

Ralph L. Pellecchio, Chairman
Capital Markets Committee

cc: The Honorable Arthur Levitt, ChairmanThe Honorable Steven M.H. Wallman, CommissionerThe Honorable Isaac C. Hunt, Jr., CommissionerThe Honorable Norman S. Johnson, CommissionerNancy M. Smith, Director, Office of Investor Education and AssistanceAnn D. Wallace, Senior Counsel to Director, Division of Corporation FinanceKathleen K. Clarke, Senior Counsel, Division of Investment Management

Footnotes

1 The Securities Industry Association is the trade association representing more than 750 securities firms headquartered throughout North America. Its members include securities organizations of all types -- investment banks, brokers, dealers, specialists, and mutual fund companies. SIA members are active in all markets, and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of investment services and account for approximately 90% of the securities industry's revenue in the United States.

2 See Report of the SEC's Task Force on Disclosure Simplification, March 5, 1996, at page 17.