

May 23, 2002

Jonathan G. Katz,
Secretary,
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: File No. S7-08-02

Dear Mr. Katz:

We are pleased to offer you the comments of the Dealer Accounting Committee (the "Committee") of the Securities Industry Association ("SIA")¹ in response to Release No. 33-8089, 34-45741 (the "Release").² Generally, the Release proposes to accelerate the filing of quarterly reports (10-Qs) and annual reports (10-Ks) under the Securities Exchange Act of 1934 by issuers that have a public float of \$75 million or more. The proposal is to shorten the filing deadlines for these companies from 45 to 30 calendar days after quarter end for 10-Qs, and from 90 to 60 calendar days after fiscal year end for 10-Ks.

Overview

At the outset, the Committee wishes to applaud the Securities and Exchange Commission (the "SEC" or the "Commission") for publishing the Release, indicating as it does the Commission's continuing interest in ensuring that quality financial disclosure is made available to investors in a timely fashion. SIA firmly believes that disclosures that help provide a clear view of the risk profile of an issuer will be a step towards improving investor understanding, and renewing trust and confidence in our capital markets.

¹ The Securities Industry Association brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in U.S. and foreign markets, and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift, and pension plans. The industry generates \$358 billion of revenue and employs approximately 760,000 individuals. (More information about SIA is available on our homepage: <http://www.sia.com>.)

² 67 FR 19896 (Apr. 23, 2002).

The Committee believes that the following key points should guide the Commission in its deliberations on the proposals contained in the Release:

- The increasing volume and detail of current required disclosure in periodic reports will make it difficult to meet the proposed deadlines. In recent years, the Financial Accounting Standards Board (“FASB”) has promulgated accounting standards that have required substantially more disclosure³, and this trend seems likely to continue, as FASB will soon require substantial changes in the manner in which SPEs are accounted for, which is likely to mean that far more information about such entities will need to be included in an issuer’s filings. The Commission has also promulgated new rules to add to the detail and complexity of periodic disclosure,⁴ recently announced its intention to propose several new corporate disclosure rules, and has already proposed additional disclosure requirements regarding the application of critical accounting policies.⁵ Simultaneously increasing the amount of required disclosures and shortening the timeframe within which they must be filed, seems virtually certain to result in unintended problems.
- Simply shortening filing deadlines for 10-Qs and 10-Ks will not materially improve disclosure. The Commission has emphasized the need for clarity and transparency of corporate disclosure, and a well-written MD&A should not be rushed, which accelerated filing deadlines will almost certainly do. Exerting additional time pressure for filing periodic reports may lead companies to focus more on the minimum requirements for a timely filing, rather than on the quality of disclosure. Accelerating filing deadlines will also decrease the likelihood of issuers making enhanced voluntary disclosures that are not required by current rules.⁶
- Accelerating filing deadlines will also impact necessary disclosure diligence, including appropriate review by an issuer’s Audit Committee and Board. Shortening the review increases the likelihood that filings will have to be

³ E.g., SFAS No. 131, “Disclosures about Segments of an Enterprise and Related Information”; SFAS No. 133, as amended, “Accounting for Derivative Instruments and Hedging Activities”; and “SFAS No. 140, “Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities”.

⁴ E.g., Regulation S-K, Item 305, “Quantitative and Qualitative Disclosure about Market Risk” and new Regulation S-K Item 201(d) requiring detailed disclosure of equity compensation plan information.

⁵ Release Nos. 33-8098, 34-45907, International Series Release No. 1258, “Proposed Rule: Disclosure of Management’s Discussion and Analysis about the Application of Critical Accounting Policies”.

⁶ For example, a number of large financial institutions have voluntarily undertaken to provide additional disclosures pursuant to the recommendations of the Working Group on Public Disclosure (the “Shipley Report”) and many are now collaborating with a newly formed Working Group of the Joint Forum on a follow-up to the Multidisciplinary Working Group on Enhanced Disclosure (the “Fisher Report”) that is seeking a means of providing additional disclosures.

amended to correct errors in figures published prematurely. This may lead to unwarranted and/or inaccurate media attention and confusion in the capital markets. (We have suggested an alternative proposal below.)

- Given the ever-accelerating pace of change impacting the capital markets and business generally, in our view it would be better to build upon and standardize current disclosure practices, thereby establishing a “continuous” system of disclosure, rather than to continue to rely upon discrete packets of data periodically provided to investors.
- While information technology has progressed significantly in the last decades, so too has the complexity of business operations, the global reach of corporations, and the complexity of accounting disclosures (e.g., the hundreds of pages on the appropriate accounting treatment of derivatives, and of SPEs).
- The decision by a firm to access the capital markets should mean a concomitant commitment to supplying quality financial disclosure in a timely fashion. No exemption from that commitment is warranted for a firm of any size.

Alternative Proposal

As an alternative to merely shortening the filing deadlines under the existing regulatory paradigm for disclosures, the Committee proposes that the SEC consider building upon a nearly universal corporate practice with a view to creating a more continuous disclosure system.

Currently, most corporations release an earnings announcement within 3 or 4 weeks of the close of the quarter, which typically precedes the filing of a 10-Q or 10-K by several weeks. In our experience, these announcements attract considerably more attention from investors and analysts than do the subsequent regulatory filings. We propose that the Commission embrace the evolution of this market practice by standardizing earnings announcements, and making them the first entry in a stream of disclosure that would be supplied to investors. We envision three elements:

First Element – We propose that any earnings announcement released by a firm be in a standardized format and take the form of a press release that would include at a minimum an income statement prepared in accordance with U.S. GAAP, (a *pro forma* calculation could be included, but a reconciliation to U.S. GAAP would be required)⁷ and total shareholders’ equity, total capital, and segment data.

Second Element – Within 30 days after the close of the quarter, the earnings announcement referenced above would be filed on an 8-K, as well as a full balance

⁷ The Commission articulated its concerns about the use of *pro forma* information that may mislead investors by obscuring GAAP financial results. Release Nos. 33-8039; 34-45124FR-59. December 4, 2001.

sheet and statement of cash flows. In the case of year-end disclosures, we would propose to file this document within 60 days.

Third Element – We would propose that the third element be the current periodic requirements, namely the filing of a 10-Q within 45 days after the end of the quarter, or the 10-K within 90 days after the end of the issuer’s fiscal year. With respect to these filings, we would observe that the delay that most firms experience is not generally due to a failure to have “the numbers” and an audit thereof but due to the time required to provide the complex footnote disclosures and qualitative descriptions required by the MD&A and footnotes to the financial statements. We urge the Commission to weigh the benefits of accelerating disclosure against the challenges of providing meaningful disclosure. If, however, acceleration is a *fait accompli*, we recommend that the Commission modify the filing deadlines to 75 and 40 days for 10-Ks and 10-Qs, respectively, and/or provide a longer phase-in period to permit issuers to acclimate procedures and systems to the accelerated filing regime.

Conclusion

The Committee shares the Commission's commitment to attempting to ensure more relevant and timelier disclosure to investors. With that goal in mind, we recommend that the SEC consider the advisability of implementing a continuous system of disclosure that would be built upon current market practices and regulatory requirements along the lines suggested above. Due to the relatively short period of time permitted for comments on the Release, we have necessarily had to provide a very broad outline of our views of how a system of continuous disclosure might be established. However, the Committee would be pleased to discuss this subject in greater detail at the Commission’s convenience.

We appreciate the opportunity to comment upon the Release. If you have any questions about our letter or would like additional input from us, please feel free to contact me, or our SIA staff advisor, Jerry Quinn (212-618-0507).

Sincerely yours,

Joanne Pace
Chair
Dealer Accounting Committee