October 20, 2008

VIA EMAIL

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

Re: Comments on Release Nos. 33-8962; 34-58657; File No. 4-567

Dear Acting Secretary Harmon:

I appreciate this opportunity to comment on the Roundtable on Modernizing the SEC's Disclosure System (the "Roundtable") described in the above-referenced release (the "Notice"). I offer my comments on the Notice both from my personal perspective as a long-time mutual fund investor and user of SEC disclosure, as well as from my professional perspective as an investment management attorney with over 20 years of experience assisting registered funds and investment advisers in meeting SEC disclosure requirements. Please note, however, that the comments I offer are my own and do not necessarily reflect the views of any of my clients.

In general, I applaud the Commission's ambitious effort to fundamentally rethink the current disclosure system (the "Disclosure Initiative") with the aim of enhancing the usefulness to investors, improving the efficiency to filers and providing regulators with better tools to fulfill their regulatory mission. To that end, I offer the following comments in response to the ideas and issues raised in the Notice. Although my comments run from the conceptual to the more mundane, I hope that offering them all at this stage will ensure they are given full consideration at the earliest stages of your thinking.

Comments

- Current Shortcomings. At the risk of belaboring points you are already know, the SEC's current forms-based disclosure system is in need of change for the following reasons:

    - The current system depends on forms that are too often redundant of one another, out-of-date and poorly drafted, creating unnecessary inefficiencies, costs and exposures to liability for filers, as well as confusion, clutter and "disclosure fatigue" for investors.[1]

    - Currently, disclosure forms are required to be prepared in various inconsistent formats and filed on various different databases, which is inefficient and confusing to both filers and investors.[2] This seems to have resulted from an evolution in technologies adopted for disclosure purposes since the earliest days of electronic SEC filings, which have never been harmonized or reconciled.

    - The concept of "forms" is outmoded, stemming back to an era in which static documents were filed on paper. Today's electronic filings could and should be

[1] For more detailed comments concerning these points and specific improvements that could be made to one SEC disclosure form, Form ADV for investment advisers, please see my comment letter dated May 9, 2008, submitted to the Commission in connection with File No. S7-10-00 at http://www.sec.gov/comments/s7-10-00/s71000-93.pdf.

[2] For example, investment advisers file their Form ADV Part 1 using a fill-in-the-field approach on the IARD system. That contrasts with advisers' Form ADV Part 2, which is now proposed to be filed via IARD in PDF format. It also contrasts with advisers' licensed personnel, who file Form U-4 via the Web CRD system, and with advisers' affiliated funds, which make filings via EDGAR in ASCII or HTML (and PDF) format. In yet another variation, advisers file their Forms 13F and 13D/G via EDGAR in ASCII or HTML format and file any Forms 3, 4 or 5 in XML format.

more dynamic and designed to allow investors, regulators and others to find the information they want without having to sort through mounds of unneeded data.

- Searching for documents filed on EDGAR is confusing, time-consuming and frustrating for all users, especially users who are not "in the know" about SEC form types and the eccentricities of the system. These difficulties stem from both technological issues about how the user interface and search functions are organized,[3] as well as non-technological issues such as the use of cryptic form names (e.g., N-1A), even more cryptic EDGAR form types (e.g., 485APOS), complex corporate/fund structures (e.g., multiple share classes within multiple series within a single investment company) and filing conventions that do not take advantage of currently available technologies (e.g., exhibits that are incorporated into later filings using "dead" references, which would be more accessible if incorporated by active hyperlinks).

We should and can do better than this, for the sake of filers, investors and regulators alike. At the same time, I would echo the comment made at the Roundtable that you should take whatever time is necessary to get this right. Changes as sweeping as those contemplated by the Notice should be undertaken only with the greatest thought and care, recognizing the potentially dramatic costs and liabilities they could impose on all involved and the potentially damaging effects that could result from getting it wrong.

- Think Outside the Technology Box. I applaud your effort to seek input from many different constituencies in this process, since the historical experiences and ideas for improvement offered by all those constituencies will be important to creating the best disclosure system for the future. However, beyond those "voices" that were represented at the Roundtable, I would urge you – if you have not already -- to seek input at the earliest stages from pure technology experts, including those with expertise in database and information management, who can help you "think outside the box" and provide input on what is technologically possible today when structuring a disclosure system. To paraphrase a story used by one of the Roundtable panelists: If you asked people in the 1800's what they needed to improve their lighting, they would have probably said, 'We need a longer burning, less smoky candle,' rather than 'We need a light bulb.' My aim in urging you to seek input from independent[4] technology experts is to make sure that your new disclosure system does not turn out to be simply a 'longer burning, less smoky candle' when a 'light bulb' would have been possible.

- Investment Companies vs. Operating Companies. I was pleased to see investment company representatives participating in the Roundtable. If nothing else, their comments should emphasize the need for in-depth and careful consideration of the differences between investment companies and operating companies when it comes to disclosure. In my view, some of the Commission's other recent initiatives – such as the XBRL proposals[5] – have not given adequate consideration to these differences when proposing

[3] For example, I am always perplexed about whether it would be most efficient to search for a mutual fund's SAI by starting from the "Search the EDGAR Database" page at http://www.sec.gov/edgar/searchedgar/webusers.htm and using the "Companies & Other Filers" link (which it says applies to mutual funds as well), the "Mutual Funds" link (is that date limited?), the "Historical EDGAR Archives" link (assuming I have pertinent header information) or the "Mutual Fund Prospectuses" link (although an SAI is not a 'prospectus' per se, it is filed on the same EDGAR form type as a prospectus, making it unclear whether SAIs are included under that link or not; moreover, the link refers to "485" filings, suggesting that it may be limited to only post-effective amendments to a fund's registration statement filed on EDGAR form types 485APOS and 485BPOS, which would include only a subset of a fund's SAI filings).

[4] By independent, I mean someone who is not biased toward staying with what they have been doing in the past due to legacy issues and the like, as well as someone who has no overarching financial or proprietary stake in what the new disclosure system will look like.

[5] For more detailed comments on the XBRL proposal for mutual funds, please see my comment letter dated July 25, 2008, submitted to the Commission in connection with File No. S7-12-08 at http://www.sec.gov/comments/s7-12-08/s71208-7.pdf.

to apply them to both investment companies and operating companies. These differences not only impact what information these companies collect, use and disseminate, but also what information investors rely on to make decisions and what liabilities attach to disclosures as a matter of law.[6] Even after hearing the Roundtable discussion, however, it is unclear to me how and whether these differences would be appropriately reflected in a "company file" system. Accordingly, I urge you to consider these differences at each and every stage of your thinking, to ensure that investment companies are not swept as an afterthought into a new disclosure system designed largely with operating companies in mind.

- Advisers, Brokers and Reps. In my view, investment advisers, broker-dealers and their licensed representatives should also be integrated into a modernized disclosure system. These filers have yet to be addressed in any of the proposals to replace EDGAR with IDEA or to utilize XBRL tagging, even though an increasing number of Americans are entrusting their financial matters to these types of service providers. Without doubt, checking out advisers and brokers via the Investment Adviser Public Disclosure website or BrokerCheck is nowhere near as difficult as retrieving filings via EDGAR, but there is still room for dramatic improvement in those platforms, as well as in the content of the filings being made on those platforms.[7]

- NSMIA. It will be important for you to consider the impact of NSMIA (the National Securities Markets Improvements Act) on any modernized disclosure system and recognize that, due to NSMIA, certain filings made with the SEC will also be satisfying state filing requirements.[8] If nothing else, this suggests that NASAA's participation in or cooperation with your efforts would be beneficial in order to avoid implementation delays or inconsistencies resulting from differing viewpoints among regulators.

- Statutory Amendments. I noted in your strategic plan that you do not anticipate the need for legislative action in order to switch from a forms-based system to a company filing system, yet that you would anticipate the liability provisions to remain as robust as ever. I would urge to you re-consider whether statutory amendments are necessary or desirable in order to modernize the disclosure system. It is unclear how the current forms-based system can be replaced without legislative amendments, given that at least some of the liability provisions under the federal securities laws are tied by statute to specific form types.[9] While I acknowledge the appeal of being able to modernize the system without needing legislation, I would urge you in the strongest possible terms not to attempt to revamp the disclosure system without carefully and thoroughly considering all the

[6] Generally speaking, mutual funds spend as much time focused on disclosure in their 1933 Act documents (e.g., the prospectus) as they do their 1934 Act periodic reports (e.g., shareholder reports). This is because mutual funds maintain evergreen registration statements so they can offer their shares to the public continuously. As such – and in contrast to operating companies – many of their principal disclosure documents are exposed both to 1933 Act liability and 1934 Act anti-fraud liability.

[7] The overlaps in disclosure between Forms ADV (Parts 1 and 2), BD and U-4 are among the most notable. As I mentioned previously, for more detailed comments concerning overlaps and improvements that could be made to the content of Form ADV, please see my comment letter dated May 9, 2008, submitted to the Commission in connection with File No. S7-10-00 at http://www.sec.gov/comments/s7-10-00/s71000-93.pdf. On a related issue, I gather there is still no publicly available database to check out state-licensed IARs (investment adviser representatives), including those associated with federally-registered investment advisers, even though they register or license with the states by filing a Form U-4 through Web CRD. While I recognize this is an issue for state regulators, given that the IARD/Web CRD filing systems are used by both the SEC and the states, it would be beneficial if this disclosure gap could be addressed as part of the Disclosure Initiative as well.

[8] For example, a federally-registered adviser's Form ADV filed with the SEC via IARD also suffices as the state notice filing for any state in which the adviser is notice-filed.

[9] For example, Section 11 of the 1933 Act ties to a false registration statement very specific liabilities, which attach to the issuer who filed the registration statement, those who signed the registration statement, those who "expertized" the registration statement, and so on, subject to various defenses. Section 11 liabilities arise if the registration statement was false at the time it "became effective" and do not apply to any other form type.

attendant liability issues and whether an unmodified statutory framework would apply appropriately and as intended to a company file or other modernized system. Given the sensitivity of this issue and echoing a comment made at the Roundtable, I would urge you to take this opportunity to consider not only the mechanics of the filing system, but the statutory framework surrounding it as well, given that it was originally structured decades ago in a very different time and may well itself be in need of modernization.

- Access Equals Delivery. Any modernized disclosure system should be designed so that filing on the system[10] can -- in as many circumstances as possible -- serve as "delivery" of disclosures required by law to be delivered to investors, clients or others. As you know, the Commission has already permitted filings made on EDGAR to satisfy delivery obligations using an "access equals delivery" or similar model in certain circumstances[11] where the cost savings and other efficiencies of using such an approach could be realized without undue loss of investor protection. Key to the question of whether the Commission should allow "access equals delivery" in any given case is how readily the documents can be accessed on the disclosure system.[12] Accordingly, I would urge you to design the access and retrieval features of the modernized system with a view to maximizing the potential for "access" to equal "delivery."

  Using an "access equals delivery" model is one way to reduce the absolutely staggering cost mentioned at the Roundtable – both in terms of dollars and trees – of printing and delivering documents to fund shareholders, a cost made more disgraceful by the little use investors make of those documents. Switching from EDGAR to IDEA, or from HTML to XBRL, or making any other improvement in the filing system itself, will not eliminate or even significantly impact this cost since the cost is not embedded in the process of preparing and filing, but rather in the process of printing and delivery.

  Hand-in-hand with considering "access equals delivery," I would urge the Commission to revisit the question of whether and how recipients must give consent to delivery of regulatory documents by electronic means rather than on paper. Today, senders often ask their recipients to affirmatively consent to electronic deliveries (that is, to "opt out" of paper deliveries) in order to satisfy the "evidence of delivery" requirements under current legal guidance.[13] As alluded to by one of the panelists at the Roundtable, the unfortunate

[10] Filing on the SEC's disclosure system or using some other electronic means of public dissemination, such as posting on a website, might be equally effective for this purpose.

[11] See Securities Offering Reform, Release Nos. 33-8591; 34-52056; IC-26993; File No. S7-38-04 (July 19, 2005) at http://www.sec.gov/rules/final/33-8591.pdf for an "access equals delivery" approach to prospectus delivery. See Internet Availability of Proxy Materials, Release Nos. 34-55146; IC-27671; File No. S7-10-05 (January 22, 2007) at http://www.sec.gov/rules/final/2007/34-55146.pdf for a similar, "notice and access" model for proxies. See also Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Investment Companies, Release Nos. 33-8861; IC-28064; File No. S7-28-07 at http://www.sec.gov/rules/proposed/2007/33-8861.pdf proposing a variation on the "access equals delivery" model for delivery of mutual fund prospectuses.

[12] For more detailed comments on how the accessibility of filed documents ties to the question of whether "access equals delivery" should be permitted, please see my comment letter dated February 26, 2008, submitted to the Commission in connection with File No. S7-28-07 at http://www.sec.gov/comments/s7-28-07/s72807-67.pdf.

[13] See, among others, Use Of Electronic Media For Delivery Purposes, Release No. 33-7233; 34-36345; IC-21399 (October 6, 1995) at http://www.sec.gov/rules/interp/33-7233.txt; Use Of Electronic Media By Broker-Dealers, Transfer Agents, And Investment Advisers For Delivery Of Information; Additional Examples Under The Securities Act Of 1933, Securities Exchange Act Of 1934, And Investment Company Act Of 1940, Release No. 33-7288; 34-37182; IC-21945; IA-1562; (May 9, 1996) at http://www.sec.gov/rules/interp/33-7288.txt; and Use of Electronic Media, Release Nos. 33-7856, 34-42728, IC-24426 (April 28, 2000) at http://www.sec.gov/rules/interp/34-42728.htm. The SEC's now very old guidance on electronic deliveries has also been called into question by the enactment of the Electronic Signatures in Global and National Commerce (E-SIGN) Act in 2000, which contemplates different, more onerous consent procedures for electronic communications in circumstances where E-SIGN applies. Although the SEC said it would address how E-SIGN impacted its earlier electronic delivery guidance, it has still not addressed this issue to my knowledge. For more detailed comments about consent and E-SIGN, please see my comment letter dated February 26, 2008, submitted to the Commission in connection with File No. S7-28-07 at http://www.sec.gov/comments/s7-28-07/s72807-67.pdf.

reality is that even recipients eager to reduce their paper burden are often unresponsive when asked to complete, sign and submit yet another form in order to "turn off" paper deliveries. Thus, I would urge that all necessary steps be taken to make the affirmative "opt out" process unnecessary or, at a minimum, to make the process of obtaining consent to electronic delivery clearer and simpler, as we move forward toward a modernized disclosure system.

- Incorporation by Reference. The concept of "incorporation by reference" has had a long, and some might say checkered, history under the federal securities laws. When a document is "incorporated by reference," one might think it becomes part of the referencing document as a matter of law, as if it were restated there in its entirety. Certain, there is authority supporting that view.[14] However, the issue is not settled definitively, leaving unanswered questions about whether and when the phrase "incorporated by reference" should be used in disclosure documents and what the effect will be when it is.[15] Despite the uncertainty, filers and their counsel cling to the ability to incorporate by reference in order to garner as much legal protection as it will offer.[16] So, for example, when the Commission prohibited incorporation by reference in the context of one voluntary disclosure initiative, the initiative failed to enjoy widespread industry adoption due to concerns about liability.[17]

  Although "incorporation by reference" is a widespread reality in today's disclosure environment, the phrase itself is highly legalistic and antithetical to the concept of Plain English. If regulators, lawyers and courts can't agree on what the phrase means, how can we expect the average investor to know? Accordingly, I would urge you to do whatever you can in the context of the Disclosure Initiative to make the phrase "incorporated by reference" unnecessary in the modernized disclosure system. Even to a less technical user like me, it would seem that hyperlinking[18] and ready electronic access to various

[14] See White v. Melton, 757 F. Supp. 267 (SDNY 1991), where the plaintiff's complaint alleged material omission in a fund prospectus although the allegedly omitted disclosure appeared in the SAI incorporated by reference into the prospectus. Although the court did not make an explicit holding regarding incorporation by reference, it did dismiss the plaintiff's complaint and, in its opinion, quoted the SEC's own statement with regard to incorporation, saying: "The SEC expressly provided that SAIs incorporated by reference are deemed 'a part of the prospectus as a matter of law.'" Id. at 271. See also SEC Release No. IC-13436 (August 12, 1983), which says: "if a mutual fund incorporates the Statement of Additional Information by reference, the Statement would be a part of the prospectus as a matter of law"; and SEC Release Nos. 33-8951, 34-52056, IC-26993 (August 3, 2005) at n. 335, which says: "Once a communication or other document is made part of or incorporated by reference into a registration statement, Section 11 liability applies to it as part of the registration statement, whether or not it is an offer." Also, see the discussion of incorporation by reference on pp. 2-3 of the comment letter dated March 17, 2008, of the ABA Section of Business Law at http://www.sec.gov/comments/s7-28-07/s72807-129.pdf.

[15] For a discussion of the effect of incorporation by reference, see G. Cohen, "Summary Versus Profile Prospectus Liability," *The Investment Lawyer*, Vol. 15, No. 2, (February 2008) at p. 5, which discusses cases and SEC statements supporting the view that information incorporated by reference becomes part of the incorporating document as a matter of law, as well as other authority suggesting that whether incorporated information becomes part of the incorporating document is subject to a facts and circumstances test.

[16] To my dismay, I too often even find myself advocating for incorporation by reference for exactly those reasons (see, for example, my comment letters referenced in other footnotes of this letter), even in cases where I would like to think that "incorporation by reference" should be unnecessary without increased risk of liability.

[17] This occurred in connection with the mutual fund "profile" initiative, authorized by the adoption of Rule 498 in 1998. Rule 498 prohibits funds from incorporating by reference the full prospectus into a short-form profile, which is widely believed to have stifled industry use of the profile due to concerns that allegations could be made that the profile omitted material information, even if the information appeared in the another publicly available document (i.e., the prospectus), albeit one not explicitly "incorporated by reference." In contrast, the recently proposed short-form "summary prospectus" would be permitted to incorporate by reference the full prospectus, SAI and shareholder reports, which commenters indicated is likely to result in more widespread industry use of that document as compared to the profile. For a discussion of this, see the ICI's February 28, 2008 comment letter on the summary prospectus proposal at http://www.sec.gov/comments/s7-28-07/s72807-92.pdf.

[18] To be sure, hyperlinking is not the same thing as incorporating by reference. The Commission has spoken to the effect of hyperlinking – most often with respect to hyperlinking to third-party information -- in its various releases on use of electronic media. See, e.g., Commission Guidance on the Use of Company Websites, Release Nos. 34-58288, IC-28351,

"layers" of disclosure should help to make the phrase "incorporation by reference" obsolete. Taking advantage of the assembled expertise of the Roundtable participants and your Staff, I would urge you to consider this among your goals.

- Unused Forms/Information. The Notice requests comment about any information that companies submit to the Commission that is not used by investors to make investment decisions. Among other forms in this category, I would urge you to consider Form N-SAR, which is filed on a semi-annual basis by registered investment companies. Even if the information in Form N-SAR is of interest to investors, the data in the form appears in such a cryptic format that it is virtually impossible for a human to read or understand what it represents.[19]

  No doubt, even if the form is not useful to investors, it might nonetheless be useful to the Staff in discharging its regulatory function. Indeed, I was under the impression at one time that the form allowed the Staff to calculate certain ratios and keep track of certain other information that would help to spot potential regulatory red flags. However, I am not clear on whether that is still the case today and I would urge you to investigate whether the N-SAR filing is still useful to the Staff in its role as regulator. Along the same lines, is the information available in other filings that the Staff can access so that filers should not have to repeat the information in Form N-SAR? Must the Staff manually calculate relevant ratios from the form or is there up-to-date software available to automate those calculations? Should the information in the form be tagged in XBRL in order to be more useful to the Staff?

  Once you have considered those questions, please consider whether any N-SAR information determined to be worth preserving could be collected and presented in a manner that is not only more useful to the Staff, but is more accessible to and understandable by any investors who might be interested in it as well.

- Technology Neutral. I would hope that your proposals to modernize the system will remain as vendor, platform and application-neutral as possible. This will help maximize flexibility for users, drive down costs by enhancing the potential for competition among vendors and avoid the disclosure system becoming inappropriately dependent upon any one vendor or proprietary format.

Questions

In addition to the foregoing comments, I have set out below a number of questions I would urge you to consider in connection with the Disclosure Initiative, recognizing that some of these questions may be better addressed in future phases of the Initiative:

1. Echoing a question asked at the Roundtable, is it envisioned that paper documents will disappear altogether in the modernized disclosure system? As far as documents required to be filed, paper documents have already disappeared, more or less. However, as noted in my earlier comments, the more problematic issue is whether paper documents should also disappear for documents required to be delivered, such as fund prospectuses and shareholder reports delivered to investors. Careful thought should be given to how many investors still do not have Internet access (or affordable, high-speed Internet access) and would potentially be disadvantaged if funds and other senders are permitted to go "100% electronic" and not be required to provide paper copies even in response to specific requests. Perhaps prior to the time that investors are denied paper deliveries altogether,

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File No. S7-23-08 (August 1, 2008), at http://www.sec.gov/rules/interp/2008/34-58288.pdf, and the earlier releases cited there.

[19] To illustrate this point, here is a link to a recently filed N-SAR: http://www.sec.gov/Archives/edgar/data/34066/000093247108001276/0000932471-08-001276.txt.

an intermediate approach could be taken, where senders would be permitted to impose a modest charge for paper delivery requests. That would likely cut down on wasteful and duplicative paper deliveries[20] and shift the cost to the investors causing the expense to be incurred, without denying them reasonable access to the documents that they might not otherwise have.

2. If the modernized disclosure system is intended to be as robust as the current system in terms of protecting investors, how would a company file system preserve responsibility under the anti-fraud laws for the "context" of filed information? As I have commented before, so much of what bears on whether disclosure is considered "fraudulent" or "misleading" under the federal securities laws is contextual, depending on factors such as:

    - where information is displayed (for example, whether information is "buried" or otherwise presented in such a way that obscures its significance or meaning),
    - in what order it is displayed,
    - what type size, font and color is used,
    - whether certain information is inside or outside of graphic boxes,
    - whether certain information is given "greater prominence" than other information,
    - what other disclosure is provided along with the information (i.e., the full context),
    - the audience viewing the information, and so on.

    However, these factors are dictated largely by how the information is rendered, and in a company file system, issuers will have no control over how information they file is rendered. In my view, issuers should bear no anti-fraud liability for the "context" of rendered information that they do not control. At the same time, it would be impractical or inappropriate to impose anti-fraud liability on the parties who do control the rendering of information in a company file system, since this will be (if I understand it correctly) parties like:

    - the SEC, perhaps by providing a basic user interface similar to the current EDGAR web portal or the XBRL pilot program "viewers";
    - third parties, who create software or other tools that allow their customers to retrieve and use filed information; or
    - users themselves, if they are technologically capable of retrieving raw data and building their own software or tools to manipulate them.

    As such, the investor protections afforded under the current system for the "context" of information filed with and retrieved from the SEC would seem to be lost.[21]

3. How would a company file system accommodate transaction-related filings as opposed to on-going company-related filings? For example, a Schedule 14A Proxy Statement contains a lot of company-related information that I believe could be handled well by a company file system, eliminating a lot of duplication that exists under the current filing regime. But it also contains a lot of transaction-related information specific to that particular vote (date and time of meeting, revocability of proxy, dissenters' rights, persons making the solicitation, etc.). How would this transaction-related information be handled in a company file system? Even though transaction-related information would not have an active "shelf-life" beyond the date of the transaction (i.e., the shareholder vote), it

[20] I gather some investors ask for free paper copies of fund prospectuses, reports and statements in addition to those they receive electronically so they can have the "best of both worlds" – both the convenience of electronic access as well as a paper copy they can save for their records without having to incur the cost of printing the document on their own printer.

[21] Presumably, issuers would still bear responsibility for the "context" of disclosures where they do control the rendering, such as in reports, statements, sales literature, ads, websites, press releases or any other communications they may use to convey information directly to investors or others. Moreover, they would presumably still bear responsibility for the basic truth and accuracy of the information they file on the company file system. However, the protections afforded by holding issuers responsible for the "context" of their disclosures on the SEC filing system would seem to get lost.

nonetheless would be important to have the information publicly available after the vote is over, archived in some way. I note that it would not be much different than the current filing system if transaction-related filings simply become a chronological series of discrete filings associated with the issuer, even if the content is pared back to only the transaction-specific information.

4. Should companies be required to "file" disclosure documents with the SEC at all? I was intrigued by the suggestion raised at the Roundtable that instead of filing traditional disclosure documents, perhaps issuers could simply "file" with the SEC a series of hyperlinks pointing to the required disclosure information residing elsewhere, raising the question of whether filed information needs to reside on the SEC's servers or whether another, better approach is possible.

   I would urge you to ask a related, even more basic question of whether companies need to be "filing" disclosure documents with the SEC at all. In other words, what is the purpose of having the SEC and its servers act as the centralizing point for all "filed" disclosure documents, whether the filing appears in the traditional form or whether the filing consists merely of hyperlinks pointing to information residing elsewhere? In connection with this question, I would point out that even under the current system, not all disclosure is "filed" with the SEC, and companies can be held liable under the securities laws for disclosures whether or not they are -- or are required to be -- filed with the SEC.

   A few points (and counterpoints) come to mind in connection with this question:

POINT **Using the SEC (and its servers) as a centralizing point for filed disclosure information….**	**COUNTERPOINT** **On the other hand….**
…gives users a single place to search for not only company-specific information, but for information not readily available from a specific company's website or disclosures, such as information on: • every reporting company within a particular category of interest, such as all companies within a particular industry or incorporated in a particular state (whether the user knows who they all are in advance or not); • every reporting company with a particular development within the given time period, such as all companies that filed for a merger within the last year; • other reporting companies that have had a similar experience or event, such as a proxy statement containing a particular shareholder proposal; • all recent filings of all types from all SEC-reporting companies, for example, to gauge trends in particular types of transactions or filings.	…it is conceivable that Web search engines (or other software) could search for and identify these types of information no matter where it resides, so long as it is posted on the Web and tagged or otherwise identifiable by the search engine in some fashion. In this way, the Web would essentially become the centralizing point for company filings, rather than the SEC, and "posting" would become the equivalent of "filing."
…provides better assurances of consistency and acceptably high standards in data management for all filers' information, such as: • formatting (fostering searchability, accessibility and	…perhaps acceptably high standards could be achieved by having the SEC set the requirements for filers posting their disclosures on the Web[22] rather than by having the disclosures filed with and managed by the SEC.

[22] For example, the SEC has proposed standards along these lines in connection with fund summary prospectuses and related documents posted on the Web in Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Investment Companies, Release Nos. 33-8861; IC-28064; File No. S7-28-07 at http://www.sec.gov/rules/proposed/2007/33-8861.pdf, addressing issues such as the amount of time the documents must be available on the Web, the format of the posted documents (i.e., they must be convenient for reading online and printing), the procedures issuers must adopt to ensure availability of the documents as required, and what the issuer must do if it becomes aware that the documents, for technological or other reasons, are not available as required.

comparability) • availability (downtime) • maintenance and protection (upgrading, data security), and • archiving (long-term storage).	
…provides clarity on the disclosures to which particular securities law liabilities attach, with less likelihood of confusion or after-the-fact alterations.	…acceptable technology may already exist ("hash" technology, for example) to reliably identify and inalterably "lock" disclosure documents posted on the Web for liability purposes, such as determining which version of the prospectus was the one in the registration statement at the time it went effective, even if it is not residing on the SEC's server.[23]
…provides a centralized transmission portal for all disclosure documents that need SEC action or attention (for example, registration statements that need to be reviewed and declared effective).	…conveying or identifying documents requiring SEC action or attention could be accomplished by any reasonably reliable means, including emails with attachments, emails containing hyperlinks, shared work spaces, etc.

Certainly, this list of points is not exhaustive but will hopefully serve to stimulate further thought about the most basic question – what is the purpose of centralized SEC filings? – as part of the effort to illuminate the best way forward in modernizing the system.

* * *

Thank you for allowing me to submit these comments on this important topic. If you have any questions or would like any further clarification about these or related points, please contact me at the phone number referenced below.

Sincerely,

L. A. Schnase
Individual Investor and Attorney at Law
713-741-8821

[23] Also, this question assumes that the current statutory framework need not (or will not) be amended to implement a modernized disclosure system. As noted earlier in my comments, the statutory framework itself should be assessed as part of the Disclosure Initiative. While I agree that the filing system should not be the driving force behind the legal framework, it certainly would be counterproductive if innovation of a modernized disclosure system were stifled by an outdated legal framework.