

Recommendations of the Investor as Owner Subcommittee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors

Preliminary Observations:

The Securities and Exchange Commission (“SEC”) houses and stewards an enormous repository of information that is invaluable to US businesses, investors, the financial sector and capital markets. With approximately 10,000 public companies and thousands of regulated entities (and 11,000 registered investment advisors, 4061 of which advise “private” funds and approximately 8000 mutual funds), massive amounts of data are regularly submitted to the SEC.¹ Since the vast majority of this information is not currently machine readable, it is difficult to retrieve, analyze and compare. These actions must, therefore, be done manually on a filing-by-filing basis.

Modern technology provides the SEC with the opportunity to unlock far greater value from the information that it collects and stores. Through the consistent application of data tagging formats like XML and XBRL, information filed with the Commission can become fully machine-readable and more easily accessible. Tagged data can, for example, be automatically downloaded into a spread sheet, where it can be sorted and analyzed.

Data tagging will enable investors, regulators, and other capital market participants to retrieve information in a cost effective and highly usable fashion. It will facilitate the SEC’s ability to monitor securities markets and assess the costs and benefits of regulatory practices. Tagging can also facilitate investor participation in the governance process. As the SEC’s Proxy Plumbing Release stated: “If issuers provided reportable items in interactive data format, shareholders may be able to more easily obtain specific information about issuers, compare information across different issuers, and observe how issuer-specific information changes over time as the same issuer continues to file in an interactive data format.”²

Data tagging is consistent with recent initiatives within Congress and the Executive Branch. The Administration has issued an Executive Order³ and implementing memorandum⁴

¹ <http://www.sec.gov/news/press/2012/2012-214.htm>

² Concept Release on the U.S. Proxy System, Exchange Act Release No. 62495 (July 14, 2010), *available at* <http://www.sec.gov/rules/concept/2010/34-62495.pdf>

³ Executive Order -- Making Open and Machine Readable the New Default for Government Information, May 9, 2013, *available at* <http://www.whitehouse.gov/the-press-office/2013/05/09/executive-order-making-open-and-machine-readable-new-default-government-> (“To promote continued job growth, Government efficiency, and the social good that can be gained from opening Government data to the public, the default state of new and modernized Government information resources shall be open and machine readable.”).

⁴ Open Data Policy – Managing Information as an Asset, Memorandum No. M-13-13 for the Heads of Executive Departments and Agencies, May 9, 2013, *available at* <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-13.pdf> (“Open Data Policy Memorandum”). Under this Policy, agencies are required to take steps toward making their data “fully discoverable

designed to promote open data⁵ by making machine readable information “the new default for government information”.⁶ Data tagging is also consistent with a policy of smart disclosure, an initiative underway within the Office of Science and Technology Policy and the Office of Smart Disclosure in the US Department of the Treasury.⁷

Tagging has also drawn increased attention in Congress. Dodd-Frank for the first time required the SEC to tag specific information.⁸ Other legislative proposals have sought to expand the use of data tagging.⁹

Finally, it is important to note that tagging is a global phenomenon. The British require all corporate tax returns to be tagged and filed online.¹⁰ Israeli companies must submit tagged filings to the country’s securities commission.¹¹ Japan in 2008 began requiring listed companies to file XBRL-based financial statements with the Financial Services Agency.¹² In June 2013, the European Parliament approved a proposal that would assign to the European Securities and Markets Authority the task of developing a single electronic format for financial statements filed with European exchanges. In developing this format, the Authority was specifically instructed to give “due reference to current and future technological options, such as eXtensible Business Reporting Language”.¹³

and usable by end users” by imposing machine-readable data tagging formats and ensuring that the data is readily available online.

⁵ The term “open data” has been defined as “publicly available data structured in a way that enables the data to be fully discoverable and usable by end users.” Open Data Policy Memorandum, *supra* note 3.

⁶ Agencies in the Executive Branch are required to take steps toward making their data “fully discoverable and usable by end users” by imposing machine-readable data tagging formats and ensuring that the data is readily available online. Although applicable to agencies within the Executive Branch, the Policy “request[s]” that independent agencies such as the SEC “adhere to” the Order. Executive Order, *supra* note 2.

⁷ See Smart Disclosure Data Community, <http://www.whitehouse.gov/blog/2013/02/11/consumerdatagov-live> Smart disclosure is defined as “the act of making potentially useful data more readily available—both to consumers directly and to innovators who can use it to build tools that help consumers make smart decisions.”

⁸ See Section 13(q), 15 USC 78m(q)(2)(D)(ii) (requiring reports filed by resource extraction issuers to be tagged).

⁹ There have been legislative proposals designed to increase the use of tagging by the federal government. See Digital Accountability and Transparency Act, H.R. 2061, 113th Cong., 1st Sess. (May 21, 2013), *available at* <http://www.govtrack.us/congress/bills/113/hr2061/text>; see also Financial Industry Transparency Act, H.R. 6038, 111th Cong., 1st Sess. (July 30, 2010), *available at* http://www.thomas.gov/home/gpoxmlc111/h6038_ih.xml

¹⁰ For a webinar covering the use of XBRL by the British tax authorities, see <http://www.youtube.com/watch?v=Yhvjs22GNU8>

¹¹ http://www.isa.gov.il/Download/IsaFile_2343.pdf

¹² Evidence suggests that the use of tagging in Japan has had a positive effect. See Bai, Zhenyang, Sakaue, Manabu and Takeda, Fumiko, The Impact of XBRL Adoption on the Information Environment: Evidence from Japan, at 29 (December 15, 2012) (“Our findings suggest that XBRL disclosures have the potential to reduce information asymmetry through improved accessibility and transparency.”), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2199696.

¹³ Available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0262+0+DOC+XML+V0//EN&language=EN#BKMD-32>.

IAC Recommendations:

Recommendation 1

That the Securities and Exchange Commission (“SEC”) adopt a “Culture of Smart Disclosure” that promotes the collection, standardization, and retrieval of data filed with the SEC using machine-readable data tagging formats. To implement this Culture of Smart Disclosure, the Commission should consider:

- Issuing a public statement acknowledging the approach;
- Requiring each operating division within the SEC to integrate data tagging into all future rulemaking and rule revision efforts that involve the collection of data by the SEC; and
- Providing adequate resources to implement this Culture, particularly through an increase in the resources of the SEC’s Office of Interactive Data.

Supporting Statement:

The implementation of a Culture of Smart Disclosure will require a serious commitment by the Commission and the staff. The approach contemplates that the Commission will consider appropriate methods of ensuring the collection, standardization, and retrieval of data filed with the SEC, particularly data tagging, and incorporate these approaches, where appropriate, into all rulemaking endeavors that require the filing of data with the Commission. Currently, the SEC requires tagging in only a limited number of filings.

To become an ordinary part of the rulemaking process, the Commission should provide for the involvement of the Division of Economic and Risk Analysis (“DERA”) at formative stages of the rulemaking process. This would allow DERA to determine the value and feasibility of tagging in any rulemaking endeavor and to assess the relevant costs associated with implementation. Such involvement would typically need to occur before the publication of any proposed rule.

More than just imbedding tags into forms, a Culture of Smart Disclosure will need to promote standardization and facilitate recovery. This may include consideration of: (1) the development of uniform tags that allow for data recovery across multiple forms; (2) consideration of the use of Inline XBRL (iXBRL), an XBRL module that allows machine readable tags to be embedded into human readable HTML filings; (3) the development of the tools necessary that facilitate the organization of data submitted to the SEC; (4) the active monitoring of any system of tagging in order to ensure both compliance and uniformity in application; and (5) the creation of a long-term plan to convert information filed with the SEC

into tagged data.¹⁴ The Commission should perhaps explore other alternatives designed to facilitate the collection, standardization and retrieval of data.

To implement a Culture of Smart Disclosure, the Commission will need to assign the necessary resources to the task. Some of the additional responsibilities will fall directly on the operating divisions. In addition, additional resources will need to be assigned to the Office of Interactive Data in DERA. The Office will need the resources that will allow for participation in all relevant rulemaking proceedings, for the monitoring of any system of tagging implemented by the SEC, and for working with other federal agencies in order to promote data collection, standardization and retrieval.¹⁵

Recommendation 2

That the SEC should take steps designed to reduce the costs of providing tagged data, particularly for smaller issuers and investors.

Supporting Statement:

The SEC currently requires the tagging of financial statements submitted by reporting companies. As a result, all public companies have some experience with tagging data. Nonetheless, the need to tag additional data may, in some cases, impose additional compliance costs, a possibility of particular concern for small issuers or investors.

These costs need to be considered in any future rulemaking endeavor that involves the consideration of tagging. To reduce these costs, however, the Commission should consider the development, where practical and technologically feasible, of applications that allow users to enter information on forms that can be converted to XML or XBRL by the SEC. Precedent exists for this approach. Investors filing reports under Section 16(a) of the Exchange Act do so on forms provided online by the SEC and converted to XML when filed. This would insure that data collection is done in the most cost effective and efficient manner, especially for smaller issuers and investors.

¹⁴ Compliance may include, for example, the issuance of formal comments in response to errors in XBRL filings. The Office of Interactive Data has issued public statements drawing attention to common errors in the XBRL versions of corporate issuers' financial statements. *See* Office of Interactive Data, Staff Observations from Review of Interactive Data Financial Statements, June 15, 2011, *available at* <http://www.sec.gov/spotlight/xbrl/staff-review-observations-061511.shtml> (last accessed June 15, 2013). Consideration should be given, however, to the incorporation of XBRL corrections into the comment letter process used by the operating divisions

¹⁵ For example, the Office of Financial Research, US Department of the Treasury, is currently developing "standards for financial data to benefit regulators and financial market participants by improving data quality, facilitating data aggregation, and reducing costs associated with data collection." *See* <http://www.treasury.gov/initiatives/ofr/data/Pages/default.aspx>

Recommendation 3

That the SEC gives priority to the revision of certain existing forms to provide for the tagging of data that would provide increased transparency with respect to corporate governance. Such revisions should include:

- The portions of the proxy statement on Schedule 14A that relate to executive compensation (including the compensation discussion and analysis and the compensation paid to directors) and matters voted upon by shareholders (including the election of directors). Data tagging should be done in a manner designed to facilitate automated matching of voting items in a proxy filing to voting results disclosed by mutual funds in Form N-PX and by issuers in current reports on Form 8-K;
- Form N-PX filed by mutual funds.¹⁶ The forms that include the registrant's proxy voting record for the most recent 12 month period; and
- Voting results filed with the Form 8-K. Item 5.07 of Form 8-K requires issuers to report voting results for any matter submitted to shareholders through the solicitation of proxies (including the election of directors).¹⁷

Supporting Statement:

The Recommendation proposes that the SEC give immediate priority to the tagging of information important to investors in the exercise of their governance rights.¹⁸ As the Commission noted in requiring the disclosure of voting information by funds:

Proxy voting decisions by funds can play an important role in maximizing the value of the funds' investments, thereby having an enormous impact on the financial livelihood of millions of Americans. Further, shedding light on mutual fund proxy voting could illuminate potential conflicts of interest and discourage voting that is inconsistent with fund shareholders' best interests. Finally, requiring greater transparency of proxy voting by funds may encourage funds to become more engaged in corporate governance of issuers held in their portfolios, which may benefit all investors and not just fund shareholders.¹⁹

¹⁶ See <http://www.sec.gov/about/forms/formn-px.pdf> A separate report is typically filed for each fund within a fund family. See Gerald Davis & E. Han Kim, *Business Ties and Proxy Voting by Mutual Funds*, 85 J. of Financial Economics 552, 556 (2007) ("The vote of each fund within a fund family is typically reported on separate N-PX forms; Fidelity, for instance, filed forms for several dozen funds.").

¹⁷ <http://www.sec.gov/about/forms/form8-k.pdf> The tagging of one item in Form 8-K may be impractical. In those circumstances, the Commission should consider revising the Form to require that all data in the Form be tagged.

¹⁸ The Committee is aware that concerns have arisen over the regulatory regimes applicable to the corporate governance process. This resolution is designed to increase transparency within the existing framework but otherwise does not speak to the merits of current regulatory regime.

¹⁹ Disclosure of Proxy Voting Policies and Proxy Voting Records by Registered Management Investment Companies, Investment Company Act Release No. 25922 (Sept. 23, 2003).

By tagging the voting data and results contained in Form N-PX, investors will be better able to compare outcomes on comparable proxy proposals and director elections and assess the voting records of mutual funds. As the Proxy Plumbing Release noted, the tagging of voting data could “facilitate more informed voting and investment decisions and assist in automating regulatory filings and business information processing.”²⁰

Likewise the tagging of compensation data will facilitate comparisons among public companies. Such data has grown in importance in the era of Say-on-Pay. Amendments adopted by the SEC in 2006 also facilitated comparisons of compensation paid to directors.²¹ Finally, the SEC has experience with respect to the tagging this type of data.²²

This Recommendation seeks to promote the tagging of information long sought by investors. This is particularly consistent with the spirit of the Executive Order promoting open and machine readable information. The Order seeks to promote “open government” by “making information resources easy to find, accessible, and usable which can fuel entrepreneurship, innovation, and scientific discovery that improves Americans' lives and contributes significantly to job creation.”

Significantly, the predecessor to this Committee unanimously recommended that these forms be tagged. In addition, the Commission also sought and obtained comments in the Proxy Plumbing Release on whether the executive compensation tables should be tagged.

²⁰ Dodd Frank recognized the importance of voting information in this area. *See* Section 951 of Dodd-Frank (adding Section 14A to the Exchange Act and requiring that “[e]very institutional investment manager subject to section 78m(f) of this title shall report at least annually how it voted on any shareholder vote pursuant to subsections (a) and (b), unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission.”).

²¹ The SEC mandated the use of a summary compensation table for directors in 2006. *See* Executive Compensation and Related Person Disclosure, Exchange Act Release No. 54302A (August 29, 2006) (noting that Commission was “adopting a director compensation table that is similar to the amended Summary Compensation Table.”).

²² <http://www.sec.gov/news/press/2008/2008-85.htm> (noting that the SEC has “created an online database tagging executive compensation data for 500 large companies.”).