

October 22, 2008

Via Electronic Filing

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

Re: Roundtable on Modernizing the SEC's Disclosure System, Rel. Nos. 33-8962 and 34-58657; File No. 4-567

Dear Ms. Harmon:

The Investment Adviser Association¹ appreciates the opportunity to comment on the Commission's Roundtable on Modernizing the Securities and Exchange Commission's Disclosure System.² The IAA fully supports the goals of the Commission's 21st Century Disclosure Initiative and its effort to improve the way disclosure works, including "tapping the full potential of today's technology and integrating it seamlessly into [the Commission's] regulatory approach."³ The availability of information and the ease with which investors may obtain information are critical for investors to make informed investment decisions.

The Roundtable Request for Comment posed several questions pertaining to the market's use of disclosure information, the Commission's current disclosure system, and modernization of that system.⁴ At this time, we are providing comments only on the

¹ The IAA is a not-for-profit association that exclusively represents the interests of investment adviser firms registered with the SEC. Founded in 1937, the Association's membership consists of more than 500 firms that collectively manage in excess of \$9 trillion in assets for a wide variety of institutional and individual clients, including pension plans, trusts, investment companies, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

² *Roundtable on Modernizing the SEC's Disclosure System*, Rel. Nos. 33-8962; 34-58657; File No. 4-567 (Sept. 26, 2008) ("Roundtable Request for Comment"), available at <http://www.sec.gov/rules/other/2008/33-8962.pdf>.

³ *SEC Announces '21st Century Disclosure' Initiative to Fundamentally Rethink the Way Companies Report and Investors Acquire Information*, Press Release (June 24, 2008) (In describing the Initiative, Chairman Cox stated, "We'll be examining how to improve the way disclosure works, including tapping the full potential of today's technology and integrating it seamlessly into our regulatory approach. That could mean fewer confusing forms, and more useful information at investors' fingertips in a form they can really use."), available at <http://www.sec.gov/news/press/2008/2008-119.htm>.

⁴ The Roundtable consisted of two panels. The first panel explored the data and technology that companies use in managing their daily business, and the processes they follow to satisfy their disclosure obligations, as well as

modernization of the disclosure system under the federal securities laws and the compelling need for the Commission to promptly issue updated guidance on electronic delivery of required documents. We would be pleased to provide additional information as the Disclosure Initiative proceeds.

The Internet Plays a Critical Role in Disseminating Important Information to Investors

The IAA strongly supports the use of the Internet for disseminating important information to investors. Internet access and computer usage have risen exponentially in recent years. As acknowledged by the Commission, Internet usage by companies, investors and other market participants is “pervasive.”⁵ Companies have the capacity to present information on their web sites to all investors on a broadly accessible basis, and investors can easily find and retrieve information about companies by searching the Internet.⁶ The Commission recognizes that investors increasingly are turning to electronic media and to company and third-party web sites as sources of information to aid in their investment decisions.⁷ During times of market turmoil, it is likely that investors rely even more than usual on the Internet to access information.⁸ According to Dr. William Lutz, Director of the Disclosure Initiative, “When Congress created the SEC, and even when EDGAR was launched, the markets worked on paper and by mail. Today the marketplace works on-line and by e-mail.”⁹

Given the increased use of the Internet by all market participants, the IAA agrees with the Commission’s assessment that the Internet and electronic communications play a “vital role . . . in modernizing the disclosure system under the federal securities laws and in promoting transparency, liquidity and efficiency in our trading markets.”¹⁰ In recent years, the Commission has issued a number of interpretive releases and rules that promote the use of company web sites as a means for companies to communicate and provide information to

the data and technology that investors use in making their investment decisions. The second panel considered how the Commission could better organize and operate its disclosure system to provide for efficiencies as well as improved access to high quality information for investors. Roundtable Request for Comment at 4. *See also Transcript of Roundtable on Modernizing the SEC’s Disclosure System* (Oct. 8, 2008) (“Roundtable Webcast”), available at <http://www.sec.gov/spotlight/disclosureinitiative/roundtable/transcript100808.pdf>.

⁵ *Commission Guidance on the Use of Company Web Sites*, Rel. Nos. 34-58288, IC-28351 (Aug. 1, 2008) (“Proposed Guidance”) at 16, available at <http://www.sec.gov/rules/interp/2008/34-58288.pdf>.

⁶ *See* Proposed Guidance at 19.

⁷ *Id.* at 6-7.

⁸ Timothy Thornton, Principal of Web Services at Vanguard, noted that web site traffic at Vanguard doubled in the week preceding the Roundtable. He estimated that approximately 25% of visitors to the web site are not fund shareholders. *See* Roundtable Webcast.

⁹ *SEC Announces Successor to EDGAR Database*, Press Release (Aug. 19, 2008) (“Successor to EDGAR Press Release”), available at <http://www.sec.gov/news/press/2008/2008-179.htm>.

¹⁰ Proposed Guidance at 6.

investors under the federal securities laws.¹¹ Based on the widespread usage of the Internet and electronic communications in today's marketplace, the Disclosure Initiative should ensure that the vital role played by these forms of communication is appropriately incorporated in Commission rulemakings.¹²

The Commission Should Issue Updated Electronic Delivery Guidance

Electronic delivery, coupled with Internet access, will help to ensure that investors can be provided with current, updated information in a cost-effective manner. According to the Commission, "We have reached a point where availability of information in electronic form – whether on EDGAR or a company web site – is the superior method of providing company information to most investors, as compared to other methods."¹³ Electronic communication is efficient and is preferable to providing information in paper documents. In announcing the successor to the EDGAR database, Dr. Lutz stated, "Companies and investors alike compile, analyze and produce information and reports electronically. With the move to an electronic data-based filing system, the SEC will not only keep pace with the markets, but will provide investors with a dynamic system they can use to get the information they need, rather than having to wade through an avalanche of paper forms, legalese, and doublespeak."¹⁴

We are pleased that the Commission supports electronic delivery of information to investors.¹⁵ We are concerned, however, that the benefits of electronic delivery of documents are not being fully realized due to the limitations posed by outdated electronic delivery

¹¹ See, e.g., Proposed Guidance, and *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies*, Rel. No. 33-8861 (Nov. 30, 2007) (proposing to permit funds to satisfy their prospectus delivery obligations by sending or giving key information directly to investors in the form of a summary prospectus and providing the statutory prospectus on an Internet web site). See also, *Securities Offering Reform*, Rel. No. 33-8591 (Aug. 3, 2005) and *Internet Availability of Proxy Materials*, Rel. No. 34-55146 (Jan. 22, 2007). Similarly, the Commission recently proposed the establishment of a single centralized repository that would electronically collect and make available information about municipal securities. See *Proposed Amendment to Municipal Securities Disclosure*, Rel. No. 34-58255 (July 30, 2008), available at <http://www.sec.gov/rules/proposed/2008/34-58255.pdf>.

¹² In particular, we continue to encourage the Commission to provide for electronic delivery of Form ADV, Part 2, coupled with Internet access. See *Letter regarding Release Nos. IA-2711; 34-57419; File No. S7-10-00; Amendments to Form ADV*, from Karen Barr, IAA General Counsel, and Valerie Baruch, IAA Assistant General Counsel, to Nancy M. Morris, Secretary, Securities and Exchange Commission (May 16, 2008) and *Letter regarding Proposed Amendments to Form ADV, Part 2*, from David Tittsworth, IAA Executive Director, to Christopher Cox, Chairman, Securities and Exchange Commission (Aug. 26, 2008).

¹³ Proposed Guidance at 11.

¹⁴ See Successor to EDGAR Press Release. See also *Shareholder Choice Regarding Proxy Materials*, Rel. No. 34-56135 (July 26, 2007) (referencing shareholder access to information) ("Information in electronic documents is often more easily searchable than information in paper documents"), at Section VI.C.1.

¹⁵ According to the Commission, "[W]hen delivery of documents is required under the federal securities laws, we have encouraged the delivery in electronic format or recognized that electronic access can satisfy delivery – hence, prospectuses and proxy materials can be delivered or otherwise made available using electronic communications and the Internet in certain circumstances." Proposed Guidance at 11.

guidance, which was last issued in 1996.¹⁶ Updated guidance is long overdue, considering that widespread Internet usage and computer access that exist today were not even contemplated twelve years ago. This concern was echoed by several of the Roundtable participants who noted the costs, inefficiencies, and environmental consequences of delivering paper documents to clients.¹⁷ One of the participants, noting the difficulties of getting shareholders to opt out of receiving paper documents, stated, “The real problem is you have to opt out of receiving paper documents and not opt in and so you have inertia working against you.”¹⁸ Accordingly, his company spent substantial time and money “printing and mailing to people things that didn’t change very much, were repetitive, not likely to be read, and could have been up on the web site.”¹⁹ While welcoming Commission initiatives, including the summary prospectus and XBRL, this panel member encouraged the Commission to make web site disclosure a priority and to “put it up on the web.”²⁰ Another participant, citing statistics reflecting that 1.3 million people have asked his company to stop mailing disclosure documents, stated that the statistical information “really reinforces how ready people are to get . . . disclosure documents electronically.”²¹

There are a number of obstacles impeding more widespread electronic delivery of documents. These obstacles include the practical difficulties involved in obtaining affirmative client consent on an opt-in basis, as well as the lack of clarity regarding the notice, access, and consent requirements due to outdated guidance and interpretive questions raised by subsequent legislation.²² Several months ago, in connection with submitting substantive comments on the proposal to update Form ADV, Part 2, we also asked the Commission to update its electronic delivery guidance to ensure that these issues could be addressed with respect to the Form ADV delivery requirements. We continue to urge the Commission to act on its proposed update of Form ADV without further delay. Consistent with the goals of the Disclosure Initiative, we also urge the Commission to take immediate action to update the electronic delivery guidance to allow clients and shareholders to take full advantage of the electronic delivery options available. Updated electronic delivery guidance would have broad

¹⁶ See *Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information*, Investment Advisers Act Rel. No. 1562 (May 9, 1996).

¹⁷ Paul Haaga, Jr., Vice-Chairman of Capital Research Management Co., for example, indicated that the shareholder reports and prospectuses sent to fund shareholders last year weighed 18.2 million pounds and filled 362 tractor trailers, and the paper used to print those documents came from 161,000 trees. Vanguard uses similar quantities of paper sending disclosure documents to shareholders. Roundtable Webcast.

¹⁸ Mr. Haaga indicated that clients have sent strongly worded e-mails to the company asking to not receive paper documents from the company. When the company sends those clients a form they can fill out to opt-out of paper delivery of disclosure documents, the clients “don’t fill it out.” *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Timothy Thornton, Principal of Web Services, Vanguard. *Id.*

²² See *Electronic Signatures in Global and National Commerce (E-Sign) Act*, Pub. L. No. 106-229, 114 Stat. 464, codified at 15 U.S.C. 7001-7031 (2000).

application beyond Form ADV. As one Roundtable participant noted, the Commission would be “defeating the very purpose of the virtual world that [the Commission] would be creating on line if [it] still required issuers, both corporate and mutual funds, to deliver paper documents.”²³ Guidance can and should be provided at this time without awaiting closure of the Disclosure Initiative and subsequent proceedings.

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The IAA strongly supports the goals of the 21st Century Disclosure Initiative and the Commission’s efforts to examine fundamental questions about the way it makes that information available to investors and the markets. We are encouraged by the Commission’s efforts to harness the benefits of information technology for investors and the markets. We appreciate the opportunity to provide our views on these issues and would be pleased to provide any additional information as the Disclosure Initiative proceeds. Please contact the undersigned at 202.293.4222 with any questions regarding these matters.

Respectfully submitted,

/s/ Valerie Baruch

Valerie Baruch
Assistant General Counsel

²³ Eric Roiter, Lecturer on Law, Harvard University Law School, Boston University Law School. *See* Roundtable Webcast.