Investor Environmental Health Network
HEALTHY PEOPLE...HEALTHY BUSINESS

October 21, 2008

Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549–1090.

Subject: Comments on SEC Roundtable and 21st Century Disclosure Initiative
File Number 4-567

Via e-mail to rule-comments@sec.gov File Number 4-567

To Whom It May Concern:

I am writing as counsel to the Investor Environmental Health Network (IEHN), a collaborative partnership of investment managers focused on the risks and opportunities associated with toxic materials in products. Our members have approximately $41 billion in assets under management. Thank you for this opportunity to comment on the Securities and Exchange Commission's 21st Century Disclosure Initiative.

The investors in IEHN are concerned with the financial risks and opportunities posed by the presence of toxic materials in the supply chain of their portfolio companies. Our experience and analysis indicates that the existing disclosure system is not working to address these issues. Awareness of product toxicity issues, and the adoption of safer materials, has led a number of companies to produce excellent financial results by anticipating and acting on long term financial risks of liability and market or regulatory exclusion, as well as the opportunities presented by being early adopters of alternative materials. In contrast, a larger number of other companies are currently failing to disclose or act on the immediate to long term risks posed by toxic materials, which we believe places some of them at serious financial risk. These shortcomings were highlighted in our recent report, *Toxic Stock Syndrome*, which found widespread failures to disclose relevant information. The report is also available on our website at http://IEHN.org.

We note in particular the importance of strengthening key ***narrative disclosure requirements*** in financial statements and SEC filings. As the SEC moves forward to reform its disclosure requirements, we hope you will address the issues raised by our report and comment letter.

1. Disclosure system must reflect a better balance of long and short term investor interests.

The current SEC disclosure framework is skewed toward encouraging disclosure of short term issues while underemphasizing the long term. Since many investors hold stock for the long term, it is essential that major issues that will play out in the long term be identified and managed. As has been noted in recent work by the Aspen Institute, the Conference Board, and the Marathon Club, there is a growing sense within the investment community of a need to align public policy and investment strategy to allow investors to weigh longer term returns, not just quarterly and annual returns.

Changes in SEC disclosure requirements can help to eliminate the skewed managerial incentives caused by current requirements. Disclosure of issues and numbers in financial statements affects investment decisions, but it also affects the management of the underlying issues. When reporting entities are required to disclose and characterize longer term issues, they are also more accountable to investors for how those issues are managed.

2. Rule changes are needed to address *narrative disclosure* of additional ESG data points.

Based on our review of SEC filings, including detailed analysis of individual company annual reports for 2006 and 2007, major industrial and other sectors affected by product toxicity risks are doing a poor job of informing shareholders of market risks they face due to toxic chemicals in their products.

Our enclosed report, *Toxic Stock Syndrome: How Corporate Financial Reports Fail to Apprise Investors of the Risks of Product Recalls and Toxic Liabilities,* was based on searches through thousands of SEC filings, and detailed review of more than 25 companies' reports. The report examines disclosures on: supply chain weaknesses before and after the 2007 toy recalls due to lead paint, scientific studies showing products causing asthma, potential health risks of nanotechnology, and the new European chemical regulatory program, "REACH" (Registration, Evaluation, Authorisation and Restriction of Chemicals).

Our analysis shows that the managers of these companies know much more about these product toxicity risks than they have chosen to share with investors. While the Management Discussion and Analysis is supposed to include trends, events and uncertainties known to management that may have a material impact on finances, when it comes to the issues underlying product toxicity concerns, this requirement is largely honored in the breach. SEC filers are not engaging in timely investor disclosure of financially important information on product toxicity risks. Some of the key findings of our report included:

- ***Bisphenol A***. Bisphenol A (BPA), is a chemical found in polycarbonate baby and sport bottles and in canned food linings. None of the four major producers of BPA, or the many companies using these chemicals, had disclosed in their financial reports any awareness of the numerous scientific studies evidencing health hazards of this chemical.

- ***Toy recalls.*** Toy makers did not disclose what they knew about lead paint risks. Prior to 2007's recalls of leaded toys, neither Mattel nor Thomas the Tank manufacturer RC2 warned investors of a tide of Chinese product recalls dating back as far as 2001; Mattel's shareholder disclosures of lead paint problems with its own toys lagged by weeks internal company knowledge of such problems.

- ***Likely or possible European bans.*** Among 10 chemical company filings reviewed in detail, none provide meaningful quantitative data on the numbers of their products or proportions of sales that may be locked out of European markets under Europe's new, stringent chemical authorization requirements. Based on electronic review of filings in the SEC's database, the report demonstrates that most companies that sell products to Europe - from paint and cleaning products, to toys and cosmetics – appear to be glossing over or ignoring major requirements that go into effect this year to preregister the contents of their products in European markets.

- ***Asthma risks.*** Companies are not disclosing to shareholders the potential for their products to cause or exacerbate asthma. The report notes Dow Chemical and Procter & Gamble as two companies that sell products containing chemicals evidenced to cause or exacerbate asthma, and which are not disclosing these risks to investors.

- ***Nanotechnology.*** Manufacturers are not disclosing the evidence of health risks of nanotech products, or the lack of adequate product testing conducted prior to their sales. While some nanomaterials manufacturers disclose potential uncertainties, users of the materials in an array of products from electronics to cosmetics are not disclosing the potential health and financial risks, even though some of these products, known as nanotubes, have been found by scientists to resemble asbestos fibers in structure and respiratory health effects.

Recommendations: Based on these and other conclusions of the Toxic Stock Syndrome report we recommend refinements to the Securities and Exchange Commission disclosure policies. The SEC's reformed disclosure program should ensure that companies will:

• report on credible new scientific findings indicative of potential product hazards, and post the company's own scientific responses and defenses only after clearly describing information on credible, adverse scientific findings.

• discuss and analyze recall and materials toxicity trends found in government regulatory databases, and their relevance to company supply chains and materials.

• promptly communicate, both internally and externally, information on supply chain management, including both specific problems as they emerge and any weaknesses in compliance assurance systems.

• characterize the portion of their product lines – as a portion of sales - that are Substances of Very High Concern (the products that may be banned or restricted in uses by European regulators). The potential for securing exemptions from the EU, given the high level of uncertainty regarding these outcomes, should not be a basis for avoiding providing this baseline analysis for product lines.

In addition, we believe the SEC should create a working group to examine how to integrate ESG and sustainability reporting in its disclosure system. With a growing number of companies in the US and especially worldwide reporting on ESG metrics, it is essential that the SEC's disclosure system be able to accommodate ESG data.

3. SEC's new disclosure changes should restore investor recourse to request "risk evaluation" information through shareholder resolutions.

We believe the 21st Century Disclosure Initiative presents an opportunity to reconsider a trend in Securities and Exchange Commission staff decisions, denying shareholders the ability to file resolutions seeking "risk evaluation."

Since 2003, the SEC staff has issued a number of unfavorable rulings on shareholder resolutions because, according to the staff, the resolutions asked companies for an *evaluation of financial risks* associated with environmental, human rights or other issues that the SEC staff has decided to treat as excludable ordinary business. This trend in staff decisions dramatically limits the scope of previously acceptable shareholder proposals, and therefore curtails the rights and protections of investors to ask for the financial impact of significant environmental and social policy issues on companies.

While the staff is allowing shareholder resolutions that ask for reports on how a company's actions will affect the environment or human rights, it is ***not*** allowing resolutions that ask how any outside issues (such as climate risk, homeland security or the HIV/AIDS pandemic in Africa) may affect the financial performance of the company. Given that the latter is a core concern to investors, the "evaluation of risk" exclusions are undermining the clear interests of investors.

Our research shows that:

- The staff application of the "evaluation of risk" rationale is not consistent with SEC rules or historical practice;
- The staff has excluded proposals that were permitted in previous years;

- The staff's use of the "evaluation of risk" rationale has grown steadily in the past few years and the rationale was used 13 times in calendar 2006;
- In calendar 2007, at least10 proposals were excluded explicitly of evaluation on risk grounds and implicitly on another 14 occasions;
- The number of resolutions excluded is not a complete reflection of the impact of these rulings on shareholders, because the SEC rulings have forced many shareowners to rewrite their proposals to avoid requests for the financially relevant information that is now deemed excludible by the Staff.

A growing number of mainstream investors such as Goldman Sachs, Lehman Brothers and Citigroup acknowledge the materiality of environmental and social issues. Investors, industry analysts, and academics consistently point to the financial consequences of issues such as climate change, environmental management and employee health and safety in industry reports, during dialogues with companies and in the media. However, investors are currently unable to press for companies to report on these issues via one of the most important communication and disclosure tools available, the shareholder proposal process.

Therefore, in addition to the reform of disclosure rules, the Securities and Exchange Commission should in the course of refinement of its disclosure approach also restore shareholder rights and recourse to propose resolutions that seek an evaluation and disclosure of specific financial risks confronting a company -- the full array of risks, including contractual and marketplace issues, as well as environmental, social, and governance issues. This is an essential complement to the requirements of SEC disclosure rules, and is not contradictory or inconsistent with SEC reporting requirements.

Thank you for this opportunity to comment. We would be glad to participate in SEC roundtables or dialogues to further expound on any of these points.

Sincerely,

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