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October 24, 2019

**File No. S7-05-19**
**SEC Release No. 33-10425**

Ladies and Gentlemen:

We write in response to the request by the Securities and Exchange Commission (the "Commission") for comments on the proposed amendments published in Release No. 33-10635, File No. S7-05-19, *Amendments to Financial Disclosures about Acquired and Disposed Businesses* (the "Release").

We generally support the proposed amendments, and appreciate the Commission's efforts to improve disclosure requirements for financial statements relating to acquisitions and dispositions of businesses. We believe that the proposed amendments represent an important step towards simplifying the disclosure system in a way that reduces the costs, time to market and burdens on registrants, while continuing to ensure that investors receive all material information.

Our responses to select requests for comment in the Release follow. Our comments do not address proposed amendments to rules and forms under the Investment Company Act or the Investment Advisers Act or certain of the requests for comment with respect to real estate acquisitions.

## Discussion of Proposed Amendments

### A. Proposed Amendments to Generally Applicable Financial Statement Requirements for Acquired Businesses

#### 1. Significance Tests

*Question 1*

We support revising the significance tests to improve their application and assist registrants in making more meaningful significance determinations and identify additional proposed revisions below.

*Question 2*

We believe that revising the Investment Test to use aggregate worldwide market value to reflect the size of the acquirer would improve the efficacy of the test as a measure of significance. However, for this to be the case, it is essential that worldwide market value include all common equity, not just common equity held by non-affiliates, as the purpose of the Investment Test is to assess the total value of the acquirer rather than public "float".

We respectfully disagree with the proposal that aggregate worldwide market value be measured as of the last day of the acquirer's most recently completed fiscal year. Although we appreciate that the significance tests historically have been tied to fiscal periods or the last day of a fiscal period, this approach seems unnecessarily restrictive and arbitrary in the case of a market value measure. We would propose that an acquirer be permitted to measure worldwide market value based on (i) for purposes of determinations prior to consummation of the transaction, its closing share price on any day during the most recently completed fiscal period preceding the announcement of the proposed transaction and (ii) for purposes of determinations following consummation of the transaction, its closing share price on any day during the most recently completed fiscal period preceding the consummation of the transaction. We think this "dynamic" approach to measuring aggregate worldwide market value is important in light of the significant period of time over which significance tests may be required (i.e., from the time a transaction becomes "probable" until the acquired company has been reflected in the financial statements of the acquirer for a full fiscal year).

We also would suggest that the Staff consider further expanding the Investment Test to permit acquirers to elect between either (i) the proposed revised Investment Test as described in the Release or (ii) a comparison of the enterprise value of the tested subsidiary to that of the acquirer. For these purposes the enterprise value of the tested subsidiary would be equal to the sum of the investments in and advances to the tested subsidiary (i.e., the purchase price) plus total debt of the tested subsidiary to be assumed, and the enterprise value of the acquirer would be equal to the sum of its aggregate worldwide market value (determined as described above) plus total debt of the acquirer as of the end of the most recently completed fiscal period. Although we appreciate that enterprise value frequently is adjusted to eliminate cash, we believe that

an Investment Test variant based on enterprise value would be simplified by omitting such an adjustment.

In the context of initial public offerings, we think it would be reasonable to permit an acquirer to rely on its good faith estimate of the low end of its filing price range (whether or not included in the relevant filing at the time) for purposes of determining its aggregate worldwide market value or a third party valuation prepared in connection with the listing.

*Question 3*

We support the proposed requirement that the amount "invested in" the tested subsidiary in an acquisition include the fair value of contingent consideration required to be recognized at fair value by the registrant at the acquisition date under U.S. GAAP or IFRS-IASB, as applicable. Because we believe determinations of whether the payment of other contingent consideration could be exceedingly difficult at the time of the required significance determination, we would recommend that the proposed amendment not require the inclusion of any contingent consideration that is not required to be recognized under applicable accounting standards. Alternatively, an acquirer could be permitted to omit contingent consideration not required to be recognized under applicable accounting standards if it determined in good faith that the probability and amount of such consideration was not reasonably estimable.

*Question 4*

With respect to dispositions by a registrant that has an aggregate worldwide market value, we believe that it would be appropriate to use a comparable calculation methodology to that proposed for an acquirer with respect to the inclusion of contingent consideration.

With respect to a registrant that does not have an aggregate worldwide market value, we believe that comparing the carrying value of the disposed subsidiary to the carrying value of the total assets of the registrant would be an appropriate methodology for determining significance.

*Question 5*

We support the Commission's proposal to add a revenue component to the Income Test. We believe that the addition of the revenue component will provide an important check on potentially "false positives" associated with the income component of the Investment Test.

*Question 6*

We believe that the percentage thresholds for the revenue component and the income component should be identical. We do not believe there is a meaningful risk that the income component of the Income Test would under-identify material transactions.

*Question 7*

We support the Commission's proposal to require recurring annual revenue for the revenue component of the Income Test as it provides a good indication as to whether revenue is a meaningful metric for assessing materiality. However, we do think it will be important for such a standard to function properly that the final rules include a definition of recurring annual revenue or clear interpretive guidance.

*Question 8*

We support the Commission's proposal to require that registrants use the lower of the total revenue or the net income components of the proposed Income Test to determine the number of years of required audited financial statements. In the scenario to which this requirement would apply, a minimum of one year of audited financial statements always would be required. In addition, even in this scenario, the Investment Test may require an additional year. And, as noted elsewhere, in many cases interim information will be required in addition to information with respect to a completed fiscal year.

*Question 9*

We do not believe that the net income component of the Income Test should be eliminated entirely. We believe that net income is an important metric for significance and that the proposed revenue component of the Income Test will provide a check on potential "false positives" under the net income component of the Income Test.

*Question 10*

We respectfully submit that having the size of the acquirer's income or loss determine whether the proposed revenue component or income component should be used for purposes of the Income Test would introduce unnecessary incremental complexity without incremental benefit to investors.

*Questions 11 and 12*

We believe that as a general matter, sophisticated investors view unadjusted EBITDA (net income before interest, taxes, depreciation and amortization) as a more useful metric of the earnings power of a business than GAAP net income. We also appreciate that EBITDA is a non-GAAP metric; however, we do not think that unadjusted EBITDA gives rise to the Commission's and the Staff's legitimate concern about lack of comparability of "adjusted" EBITDA of similar non-GAAP metrics. Accordingly, we would encourage the Commission to consider using unadjusted EBITDA rather than after tax net income for purposes of the income component of the Income Test. If the Commission elects not to adopt that metric, we would propose retaining the existing use of pre-tax income for purposes of the Income Test. Although, for the reason stated in the Release, the use of pre-tax income may require additional calculations and may not tie directly to the income statement, we believe that it is a better metric for comparing the relative size of different enterprises. The impact of taxes is

simply not comparable across businesses in many instances. In addition, today many registrants and likely even more private businesses are structured as limited liability companies, partnerships, "S" corporations and other entities where taxes are not paid at the entity level. Unless the proposed rules provided a methodology for tax-adjusting the net income of these pass-through entities, their significance frequently could be overstated. We support the use of absolute values for purposes of these calculations.

*Question 14*

Other than as set forth above, we do not believe there are other revisions to the Investment Test, Income Test or Asset Test that the Commission should consider.

*Question 15*

We believe that operating cash flow could potentially be a good metric for purposes of the "net income" component of the Income Test. However, since Article 11 does not require the preparation of pro forma cash flow statements, we believe that it would be somewhat incongruous to use operating cash flow as a measure of determining whether historical financial statements of the tested subsidiary and pro forma financial information are required to be disclosed. As discussed above, we believe unadjusted EBITDA would be a better metric than after-tax net income for this purpose.

*Question 17*

Although we believe that it is clear that "significant subsidiary" determinations should be made using amounts derived from consolidated financial statements of the tested subsidiary and consolidated financial statements of the registrant, we are supportive of an express statement to that effect in the final rules.

*Question 18*

We are very supportive of the trend of the Commission and the Staff to embrace a "principles-based" approach as they undertake this very important effort to modernize the disclosure rules under the Federal securities laws. However, in the interest of uniformity of application, we believe that a bright line rule for purposes of determination of significance in the acquisition and disposition context is preferable. We also applaud the Staff's willingness to exercise its discretion to provide relief pursuant to Rule 3-13 from these bright line rules in appropriate circumstances, and believe providing such relief is essential to reduces the costs, time to market and burdens on registrants, while continuing to ensure that investors receive all material information.

**2. Audited Financial Statements for Significant Acquisitions**

*Question 19*

For the reasons stated in the Release, we support the Commission's proposal to eliminate the third year of pre-acquisition audited financial statements required for business acquisitions exceeding 50% significance in Rule 3-05(b)(2)(iv).

We believe that two full years plus, in many cases, interim financials provide a sufficient level of detail on the historical performance of a company as evidenced by, among other things, the widespread acceptance of fewer years of audited financial statements in the registration statements of Emerging Growth Companies.

*Question 20*

We support the Commission's proposal to eliminate the comparative prior year interim period when only one year of audited Rule 3-05 Financial Statements is required. We believe that one full fiscal year of financial statements, together with the subsequent interim period, typically provide sufficient "run-rate" data with respect to acquired companies at the lower threshold of significance. In addition to the reasons supporting this proposed approach set forth in the Release, we note that the proposed approach is consistent with Article 11, which permits, but does not require, a pro forma income statement for the comparative prior year interim period. In our experience, such an income statement is rarely provided.

### 3. Financial Statements for Net Assets that Constitute a Business

*Question 21*

We support the Commission's proposal with respect to the provision of financial statements of assets acquired and liabilities assumed and statements of revenues and expenses. However, we believe that the proposed condition (the second part of proposed Rule 3-05(e)(1)) that the business "was not a separate entity, subsidiary, segment, or division during the periods for which the acquired business financial statements would be required" should be omitted from the final rules. We believe this proposed requirement is unnecessarily formalistic and inconsistent with how most businesses prepare financial statements, and that the other proposed conditions are sufficient to identify situations in which the proposed approach is appropriate.

*Question 22*

We support the Commission's suggestion to permit registrants to provide other information, such as revenue and cost of revenues, in lieu of abbreviated financial statements in cases where acquired product lines meet the definition of a business and thus implicate Rule 3-05. Provision of this information should provide sufficient information regarding the order of magnitude and profitability of the acquired product lines. However, given the nature of this information, we do not believe it is reasonably susceptible to audit and would recommend that the Staff permit such information to be unaudited. We believe the 75-day filing period also should apply equally in these circumstances. Finally, given the nature of the information proposed to be required, we do not believe Article 11 pro forma information would provide meaningful additional information, and therefore would not require it in these circumstances.

*Question 23*

We believe that the proposed inclusions and exclusions are clear; however, we would recommend that the Commission permit a registrant to omit any of these items if they are not reasonably susceptible to accurate calculation so long as the registrant provides clear disclosure of the items omitted.

**4. Financial Statements of a Business that Includes Oil and Gas Producing Activities**

*Question 24*

We believe that codifying the guidance as proposed would improve efficiency, increase consistency and appropriately balance the cost of preparing acquired business financial information with the protection of investors. As described above, we would propose to delete the second requirement of proposed Rule 3-05(e)(1) (the proposed requirement that the business "was not a separate entity, subsidiary, segment, or division during the periods for which the acquired business financial statements would be required").

**5. Timing and Terminology of Financial Statement Requirements**

*Question 25*

For the reasons stated in the Release, we support the Commission's proposal and do not recommend other clarifications or updates.

*Question 26*

We believe that the current proposed language related to independence standards is sufficiently clear and that there currently is little, if any, confusion on this topic.

**6. Foreign Businesses**

*Questions 27 and 28*

We believe that the proposals to permit (1) Rule 3-05 financial statements to be prepared in accordance with IFRS-IASB without a U.S. GAAP reconciliation and (2) any required reconciliation of foreign business financial statements prepared other than in IFRS-IASB to IFRS-IASB are long overdue accommodations in the circumstances described in the Release, and are supported by the now widespread acceptance and understanding by the investment community of financial statements prepared in accordance with IFRS-IASB as well as the quality of the related auditing standards.

### 7. Smaller Reporting Companies and Issuers Relying on Regulation A

*Questions 29 - 31*

We support the Commission's proposal to conform the rules applicable to smaller reporting companies to those applicable to other registrants while retaining the form and content requirements of Rules 8-02 and 8-03. We believe that the proposed changes will increase efficiency in the application of the rules across registrants without imposing additional burdens on smaller reporting companies.

## B. Proposed Amendments Relating to Rule 3-05 Financial Statements Included in Registration Statements and Proxy Statements

### 1. Omission of Rule 3-05 Financial Statements for Businesses That Have Been Included in the Registrant's Financial Statements

*Questions 33 and 34*

We support the Commission's proposal to no longer require Rule 3-05 Financial Statements once the acquired business is reflected in filed post-acquisition audited consolidated financial statements of the registrant for a complete fiscal year. We believe that the proposed amendments generally will result in a sufficient level of information being available to investors. In this regard, we note that acquisitions rarely occur on the first day of a fiscal year. Accordingly, as a practical matter, acquired business typically are reflected in the registrant's post-acquisition consolidated financial statements for longer than 12 months – often significantly longer – before the proposed rule would apply. Additionally, a registrant will remain free to include information technically permitted to be excluded by the proposed rule if determines that such information is appropriate to disclose.

With respect to the existing "not previously filed" trigger, we believe that it has served more as a formalistic and expensive trap for the unwary (particularly in the IPO context) rather than as a mechanism for providing disclosure that is relevant to an investment decision. Similarly, in our experience, compliance with the "major significance" trigger is a rote exercise that does not provide incremental material information to investors.

### 2. Use of Pro Forma Financial Information to Measure Significance

*Question 35*

We support the Commission's proposed revision to permit significance testing based on pro forma financial information in circumstances described in the Release. We believe that it is appropriate and sensible to permit the use of published pro forma data for the significance analysis when any acquired company financial statements and pro form information underlying the significance analysis has been filed. For purposes of Rule 11-01(b)(3) and elsewhere in the proposed rules, we encourage the Commission to add an express statement that any information required to be filed by a

registrant will be deemed filed for purposes of the rules if included in a confidential submission with the SEC.

*Question 36*

We believe that the proposed amendments would provide flexibility and simplicity in the determination of significance without delaying or accelerating the required filing of pro forma financial information and therefore should be optional rather than mandatory. We do not believe that providing this flexibility creates meaningful risk that registrants will seek to "manage" the timing of the filing of acquired company financial statements or pro forma financial information.

**3. Disclosure Requirements for Individually Insignificant Acquisitions**

*Questions 37 and 38*

We appreciate the Commission's efforts to streamline the financial statement requirements with respect to individually insignificant acquisitions and believe that the proposed amendment to require registrants to provide Rule 3-05 Financial Statements only for those acquisitions whose individual significance exceeds 20% is appropriate. Permitting registrants to omit historical financial statements for acquisitions whose individual significance does not exceed 20% will appropriately reduce the expense of preparing audited financial statements for immaterial acquisitions.

We have concerns about the potential complexity and expense associated with the proposal to require registrants to provide pro forma financial information depicting the aggregate impact of <u>all</u> acquisitions for which financial statements are either not required or not yet required. Under Article 11, the required pro forma financial information is not audited and thus theoretically such pro forma information could be prepared based on unaudited acquired company financial statements and at less expense to the registrant than if audited financial statements were required for each acquired company. We question, however, whether registrants and other offering participants will be comfortable preparing pro forma financial information that is based on unaudited annual or unreviewed interim target company financial statements.

It is customary for a registrant's auditor to provide a "comfort" letter addressed to the underwriters and the registrant's board of directors in the context of a securities offering. These letters frequently provide specified "negative assurance" comfort with respect to Article 11 pro forma financial information. Under the relevant accounting literature, auditors typically only will provide "negative assurance" comfort on pro forma information if the financial information of the acquired business or businesses that is used to prepare the pro forma information has been audited or reviewed. As a result, if the proposed requirement that the Article 11 pro forma information give effect to all acquisitions (including insignificant acquisitions) is adopted and underwriters and boards of directors continue to require "negative assurance" comfort as part of their due diligence activities, registrants may be required to audit the financial statements of more rather than fewer businesses. One way to mitigate this risk

would be to retain as an option permitting a registrant to include a majority of the acquired businesses in the pro forma presentation. Another potential way to mitigate this potential expense would be for the revised rules for individually insignificant acquisitions to exclude the Investment Test and Asset Test and only require historical pre-acquisition financial statements and pro forma financial information if the individually insignificant businesses together exceed 50% significance under the Income Test. We believe that — as it relates to the importance of presenting historical financial information — the proposed revised Income Test is the most relevant indicator of the aggregate materiality of individually insignificant acquisitions.

*Question 39*

In light of the significantly different types of transactions covered by Rule 3-05 and 3-14, we do not believe that such transactions should be aggregated.

## C. Rule 3-14 – Financial Statements of Real Estate Operations Acquired or to Be Acquired

### 1. Align Rule 3-14 with Rule 3-05

*Questions 40 - 42*

For the reasons stated in the Release, we support the Commission's proposals to harmonize Rule 3-14 with Rule 3-05.

### 2. Definition of Real Estate Operation

*Question 43*

For the reasons stated in the Release, we believe that the proposed definition is appropriate.

### 3. Smaller Reporting Companies and Issuers Relying on Regulation A

*Questions 46*

For the reasons stated in the Release, we support the Commission's proposals to direct smaller reporting companies to Rule 3-14.

## D. Pro Forma Financial Information

### 1. Adjustment Criteria and Presentation Requirements

*Questions 52, 53 and 55*

We do not believe that there is significant confusion among preparers of financial information or investors with respect to the current Article 11 pro forma adjustment methodology, including using the current "continuing impact" criterion, or the benefits and limitations of such disclosure. As further described below, we have

significant concerns regarding the proposal to require Management's Adjustments and are opposed to the inclusion of such a requirement in the final rules. Accordingly, we would recommend retaining the existing methodology.

*Questions 54, 56 - 57*

We respectfully submit that acquisition and disposition related disclosure would not be improved — either in content or comparability — by requiring disclosure of Management's Adjustments, and we are opposed to requiring them. Among our concerns with respect to the proposed Management's Adjustment disclosures are:

- Historically, the Commission has had different and separate rules regarding the presentation of historical financial information (including Article 11 of Regulation S-X with respect to pro forma historical financial information) and forward-looking projections (Item 10 of Regulation S-K). We believe that Management's Adjustments are properly considered projections, and that requiring inclusion of Management's Adjustments in Article 11 pro forma financial information would result in a potentially confusing combined "historical" presentation of actual historical financial information and forward-looking projections.

- We believe that the "reasonably estimable and reasonably expected" standard will potentially result in inconsistent disclosure among registrants.

- We believe that requiring registrants to disclose their detailed plans to achieve future synergies before those plans have been finalized or implemented may result in disruption to relationships with employees, customers, business counterparties and other constituents.

- Synergy estimates often reflect anticipated cost savings and other items that only will be recognized over a multi-year period; accordingly, applying full run-rate synergies to historical financial periods as though all such synergies had been achieved on the first day of the pro forma fiscal period may tend to overstate the significance of the impact of such synergies.

- We believe that Management's Adjustments may change over time as additional information becomes available, which could result in inconsistent disclosure regarding the same transaction when pro forma information is required to be disclosed at different times (for example in a proxy statement, a registration statement and a Form 8-K each filed at different times in respect of the same transaction). As pro forma financial information may be required until the acquired business has been incorporated into the acquirer's

financial statements for a full year, significant time may elapse from the time of the initial disclosure of Management's Adjustments until the last such required disclosure.

- We note that in the Release, the Commission would expressly not permit a registrant to give effect to Management's Adjustments when using pro forma financial information to determine significance (see text at note 112). We believe this provision evidences the Commission's concern that such adjustments are qualitatively different and inherently less reliable than Transaction Accounting Adjustments.

For the reasons set forth above, we would not recommend requiring Management's Adjustments in the final rules. However, we encourage the Commission to permit such disclosures on a voluntary basis rather than on a mandatory basis and either on the face of the pro forma financial information (in a separate adjustment and pro forma column as proposed) or in the notes or text provided with the pro forma financial information.

Clauses (a)(10)(iii) and (iv) of proposed Rule 11-02 each would require that a registrant disclose supplemental information with respect to each Management's Adjustment and synergies and other transaction effects that are not reasonably estimable as necessary to provide "a fair and balanced presentation of the pro forma financial information". Rather than create a new disclosure liability standard by including this "fair and balanced" language in the revised rule, we would propose that the Commission include an instruction drawing registrants' attention to the liability standard of Rule 175 (which excludes from the Rule 175 safe harbor statements made "without a reasonable basis or ... disclosed other than in good faith"). Any additional detail or examples the Commission wishes to provide as to how Management's Adjustments or other synergy disclosure could be misleading (for example, by disclosing estimated cost savings without disclosing the estimated costs of achieving such savings) could be included in such instruction. We note that "reasonable basis" also is the standard set forth in Item 10(b)(1) of Regulation S-K with respect to projections and Item 10(b)(2) provides a good description of how projections could be misleading, and we respectfully suggest the Commission consider a similar approach to facilitate disclosure of Management's Adjustments that is not misleading.

We would not recommend limiting voluntary disclosure of Management's Adjustments to synergies and other transactions that have been previously furnished or filed in disclosure with the Commission.

*Question 58*

Whether the concept of Management's Adjustments is included in the final rules as required or optional disclosure, we believe that it is essential that the final rules expressly provide a safe harbor for forward-looking information, including any pro forma information that includes <u>both</u> historical and forward-looking information. Insofar

as pro forma financial information is only provided for historical (i.e., completed) fiscal periods, we believe express language to the effect that the safe harbors apply to pro forma information that includes both historical and forward-looking information in the proposed Instruction to paragraph (a)(6)(ii) is important to eliminate any ambiguity over the applicability of the safe harbor.

*Question 60*

Other than as described above, we would not propose other amendments to improve the presentation requirements of Article 11.

*Question 61*

We believe that registrants and advisors will interpret "transactions" broadly in the context of Rule 11-01(a)(8) and support the proposed deletion of the reference to "events".

*Question 62*

We do not believe that further clarification is required.

**2. Significance and Business Dispositions**

*Question 64*

We support the Commission's proposal to raise the significance threshold for the disposition of a business from 10% to 20% as we believe that dispositions and acquisitions should be treated in a similar manner.

*Question 65*

For the reasons stated in the Release, we support the Commission's proposal to conform the tests used to determine significance of a disposed business to those of an acquired business. We do not believe the guidance in Instruction 4 of Item 2.01 with respect to determining the significance of a transaction not involving a business needs to be revised although the Commission may wish to conform Rule 11-01(e) to clauses (i) and (ii) of Instruction 1 of Item 2-01.

*Question 66*

We believe that the existing provisions of Form 8-K permitting a 75-day grace period for the filing of acquired company financial statements and pro forma financial information should be expanded to cover dispositions. Although it is true that a registrant disposing of a business does not need access to financial information of a third party in order to prepare the information required in respect of a disposition, the preparation of this information can still be time-consuming.

In addition, we would propose that the requirement to provide financial statements and pro forma financial information with respect to a disposition be deemed satisfied if, prior to the date such information would be required to be filed (giving effect to the 75-day grace period), the registrant has filed "recast" financial statements showing the disposed business as discontinued operations for the periods that would be covered by the financial statements and pro forma financial information related to the disposed business that otherwise would be required. In our view, the separate financial statements and pro forma information do not provide sufficiently incremental information to the recast financial statements to justify their cost.

### 3. Smaller Reporting Companies and issuers Relying on Regulation A

*Questions 69 -71*

As stated above, we are generally supportive of the proposals to conform the rules applicable to smaller reporting companies with those of other registrants as it relates to Article 11.

## Additional Comments on Proposed Rule 3-05(b

Footnote (6) in the Release and proposed Rule 3-05(b)(1) and (2) indicate that the revisions to Rule 3-05 with respect to acquired company financial statements would not apply in the context of offerings registered on Forms S-4 or F-4 and thus the proposed rules would maintain the separate disclosure requirements distinguishing between securities offered for cash and securities offered to holders of securities of the business to be acquired. We would respectfully recommend that this distinction be eliminated other than for purposes of Rule 305(b)(4), which permits the omission of acquired company financial statements in certain circumstances in registration statements for offerings for cash where the significance of the acquired business is less than 50%. We question the ongoing vitality of this distinction as it is not clear to us why target company shareholders need more information about the company in which they already hold securities in order to make an investment decision with respect to the securities of the acquirer.

If the Commission determines that retaining the existing distinction fulfills an investor protection goal, we would respectfully submit that the distinction be limited to equity securities offered to holders of securities of the business to be acquired. It has become increasingly common in connection with acquisitions for the acquirer to conduct a so-called "obligor exchange", whereby the acquirer offers new debt securities of the acquirer in exchange for existing debt securities of the target company. Typically the exchange ratio is 1:1 with a modest cash early exchange premium and the new securities have the same economic terms (coupon, call structure and maturity) as those of the target company. Currently, a high percentage of these obligor exchange transactions are conducted in reliance on Rule 4(a)(2) and limited to holders of the target debt securities that are Qualified Institutional Buyers or non-U.S. persons (as defined in Regulation S). Debt holders not meeting the eligibility criteria are excluded from the exchange with a potentially adverse effect on the liquidity of the unexchanged securities. We believe that

permitting debt offerings on Forms S-4 and F-4 to comply with the requirements of Rule 3-05(b)(2) would encourage acquirers to conduct obligor exchanges on a registered basis and thereby permit all holders of the target debt securities to participate.

* * *

We would welcome the opportunity to discuss any of the above issues further with the Commission. Please feel free to direct any inquiries to Richard A. Hall ([redacted]; [redacted]), Andrew J. Pitts ([redacted]; [redacted]) or Craig F. Arcella ([redacted]; [redacted]).

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