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October 11, 2007

Via email: rule-comments@sec.gov

Ms. Nancy M. Morris,
Secretary,
Securities and Exchange Commission,
100 F Street, NE,
Washington, DC 20549-1090.

Re: Proposed Amendments to Regulation D – File No. S7-18-07

Dear Ms. Morris:

This letter is in response to Release Nos. 33-8828; IC-27922 (the "*Proposing Release*") in which the Commission solicits comments on proposed amendments to Regulation D under the Securities Act of 1933.

We strongly support the Commission's determination to eliminate the absolute ban on general solicitation and advertising for Regulation D offerings through the proposal of new Rule 507, which permits a very limited type of public advertising. We believe, however, that the continuing limitations on general solicitation and advertising are unnecessary and inconsistent with Regulation D's focus on protecting purchasers as opposed to mere offerees, and should be entirely eliminated for Rule 507 offerings. If the limitations on general solicitation and advertising are not eliminated, then we believe that, at a minimum, the limitations should be made less restrictive. We also believe that Rule 507 should be coordinated with Rule 144A more closely, and that Form D should be eliminated for Rule 507 offerings.

1. The limitations on general solicitation and advertising for Rule 507 offerings should be eliminated.

Rule 507 would be available only for an offering in which all purchasers satisfy the new heightened standards of "large accredited investor." Given that fact, it is difficult to understand which investors the continuing limitation on general solicitation

and advertising is intended to protect. It does not appear that the restrictions are for the protection of the large accredited investors, since they are, by definition, sophisticated enough to evaluate any provided information appropriately, and in any event will be able to obtain more extensive information from the issuer once the initial connection is made. On the other hand, investors who are not large accredited investors do not need protection in a Rule 507 offering because, by definition, they will not be purchasing the securities. Issuers will not have an incentive to target the general public through general solicitation or advertising because the issuer can not make sales to them.

We believe that the requirements of Rule 507 relating to the avoidance of general solicitation or advertising should be eliminated. In order to make the process of seeking out and negotiating with large accredited investors more efficient, there should be no limitations on the form and content of offering materials in a Rule 507 offering, other than those imposed by the Commission's antifraud rules. These restrictions serve only to make the private offering process more costly and less efficient for both issuers and investors.

2. The general solicitation and advertising restrictions for Rule 507 offerings, if not eliminated, should be made less restrictive.

If the Commission nevertheless determines to retain restrictions on general solicitation and general advertising, they should be liberalized beyond the limited "tombstone"-type advertisements proposed to be permitted for a Rule 507 offering. Relaxation of the restrictions on form and content is justified because only large accredited investors will ultimately be purchasing the securities. In particular, we believe that the following changes should be made to the general announcement permitted by the proposed rules:

Oral announcements should be permitted. The proposed exception for Rule 507 announcements would apply only to solicitations that are in writing. This distinction – oral offers are prohibited but written offers are not – runs counter to the logic behind the securities laws generally, including Section 5(b) of the Securities Act, which (prior to 2005, when the exemptions for free writing prospectuses were adopted) permitted oral offers but not pre-effective written offers (other than the statutory prospectus) in the registered offering context. While we understand why the Commission may wish to limit television or radio advertising, a blanket prohibition on oral offers – say, in a presentation by the company at an investor conference – is too extreme. We believe the requirement that the announcement be in writing should be eliminated, and only specified forms of mass communication (including television and radio) should be prohibited.

The 25-word limit should be eliminated. The proposed rule changes would allow a very limited set of items to be included in a Rule 507 soliciting communication,

including "a brief description of the issuer in 25 words or less." In our experience, some companies and industries are sufficiently complex that investors will be best served by giving issuers the flexibility to include additional language in the communication. We are unaware of any similar arbitrary word limitation in any of the Commission's disclosure rules. We recommend permitting information about the issuer similar to that permitted by Rule 134(a)(1) and (a)(3) in the registered context.

Additional offering-related disclosure should be permitted. The content of the communication permitted in the context of a Rule 507 offering should be more closely patterned on Rule 134 under the Securities Act. Rule 134 permits certain limited information regarding a pending registered offering to be communicated to investors without the communication being a "prospectus." We believe that the limited advertising permitted by new Rule 507 should be able to include disclosure similar to that permitted under Rule 134, including any or all of the following, as applicable:

- the expected use of proceeds for the offering;
- the expected timing of the offering;
- any security rating that has been assigned or is reasonably expected to be assigned to the security;
- whether the security will be eligible for trading on any particular trading platform or trading system for unregistered securities and, if so, the expected ticker or similar symbol;
- if the price of the securities has not yet been determined, a price range for the offering;
- in the case of a combined Rule 507/Rule 144A offering, the names of and contact information for the initial purchasers in the Rule 144A transaction; and
- any limitation on the category of investors who will be permitted to purchase in the offering, beyond the "suitability standards" referred to in the proposed rule.

We believe that making this information available to prospective investors will provide a benefit to both eligible investors and the issuer, and will not undermine investor protection.

3. The Rule 507 limited advertising provision should be better coordinated with Rule 144A.

The Proposing Release contemplates that Rule 507 would be used in conjunction with resales under Rule 144A, and seeks to coordinate these provisions by providing that the limited advertising permitted in the Rule 507 offering would not be an offer to non-QIBs under Rule 144A. As an initial matter, we believe that the Commission should take this opportunity to eliminate the prohibition in Rule 144A on offers to non-QIBs. Since all purchasers must be QIBs, there are no investor protection concerns arising from the fact that offers may have been made to non-purchasing investors who are not QIBs. Rule 144A has been working well in the 12 years since its adoption, with no reported abuses. Against this history, it is time to eliminate the prohibition on offers to persons who can not buy. The Regulation D safe harbor has no similar limitations, even though the eligible purchasers – accredited investors – would include many who are less sophisticated than those in a Rule 144A offering to QIBs.

If the Commission determines to retain the Rule 144A prohibition on offers to non-QIBs, we support the clarification that the issuer's use of a Rule 507 general announcement does not violate this provision. However, we believe that this clarification does not go far enough, and does not take into account the way that Rule 144A offerings are generally conducted. As a practical matter, it is generally the investment banks serving as initial purchasers, not the issuer, that seek out eligible purchasers, and that would be seeking to publish the general announcement. However, under Rule 507 as proposed, it is unclear whether the initial purchasers would be permitted to issue a Rule 507 general announcement, since it is not clear that they are "acting on the issuer's behalf" in publishing the announcement. Accordingly, we urge the Commission to clarify the availability of the Rule 507 announcement to ensure that an initial purchaser in a subsequent Rule 144A offering can publish the announcement on its own volition, as part of its selling efforts, and that this publication will not result in a violation of Rule 144A.

4. Form D should be eliminated for Rule 507 offerings.

While we believe the Form D has very limited usefulness and would support its elimination, we understand that it may provide some information dissemination purpose for offerings that have non-accredited investors as purchasers. We see absolutely no benefit, however, in requiring a Form D for a Rule 507 offering where all investors are large accredited investors. These are essentially private transactions between an issuer and very sophisticated investors, and public disclosure is unnecessary, and may raise privacy or other concerns for issuers or investors. We believe that the requirement for a Form D filing will cause many issuers to proceed with a Rule 4(2) offering, relying on the judicial guidance applicable to private placements, rather than using Rule 507. At the

very minimum, Form D should be eliminated for Rule 507/144A offerings sold solely to QIBs.

To the extent that Form D serves the parallel purpose of satisfying any state securities law provisions, an issuer should be permitted to voluntarily file in its discretion.

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We appreciate this opportunity to comment on the proposed amendments, and would be happy to discuss any questions with respect to this letter. Any such questions may be directed to John T. Bostelman (212-558-3840) or to Robert E. Buckholz, Jr. (212-558-3876) in our New York office.

Very truly yours,

SULLIVAN & CROMWELL LLP