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November 29, 2010

Re: Comments on Short-Term Borrowings Disclosure
File Number S7-22-10

VIA E-MAIL: rule-comments@sec.gov

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

Dear Ms. Murphy:

We are submitting this letter in response to the solicitation by the Securities and Exchange Commission (the "**Commission**") of comments on the proposed amendments to require Short-Term Borrowings Disclosure (the "**Proposed Amendments**") set forth in Release Nos. 33-9143; 34-62932 (the "**Release**").

We appreciate the opportunity to comment on the Release and the Commission's goal of improving company disclosure of material short-term borrowing practices. In light of the Commission and staff's recent formal and informal guidance clarifying existing liquidity and capital resource disclosure requirements, however, we urge the Commission to take the time to consider whether disclosures in this area have already improved under existing requirements before imposing additional prescriptive requirements. To the extent the Commission does decide to adopt final rules in this area, changes should be made in the final rules in order to balance the Commission's goal of shedding greater light on companies' short-term borrowing practices with concerns that the Proposed Amendments could impose unreasonable and disproportionate costs on companies that will need to update their data gathering systems and implement new disclosure controls and procedures. Lastly, we respond to the Commission's inquiry about whether it should impose a leverage ratio disclosure requirement—in short, no. We believe that the imposition of a one-size-fits-all leverage ratio disclosure requirement will not provide additional meaningful disclosure to investors.

1. The Commission should determine whether disclosure of material short-term borrowing practices has already improved in light of the Commission and staff's recent focus and guidance before imposing additional prescriptive requirements.

We understand the Commission's goal in issuing the Proposed Amendments is to provide greater clarity about short-term borrowing practices, particularly in light of the financial events of the past few years and concerns about "window dressing". The Commission and staff have already put companies on notice, however, that better disclosure of short-term borrowing practices is required. For example, the Commission's recent guidance entitled "*Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis*" and the staff's "Dear CFO" letters distributed earlier this year each called for great clarity of material differences in period-end and intra-period balances. The Commission risks imposing undue burdens on companies and in effect, "fighting the last war," by also imposing additional prescriptive short-term borrowing disclosure requirements on all companies, even those with immaterial short-term borrowing practices. While current liquidity and capital resource disclosure requirements are more principles based, the Commission and staff's continued focus on compliance with these requirements is a better approach than the adoption of more prescriptive rules that will require all companies to add more, but not necessarily better, disclosure to their already lengthy reports. At the very least, before adopting the Proposed Amendments, the Commission and staff should determine whether the most recent quarterly and annual filings by financial institutions and others already provide improved disclosures of material short-term borrowing practices as a result of recent formal and informal guidance.

2. Like Industry Guide 3, *Statistical Disclosure by Bank Holding Companies* ("Guide 3"), the final rules should provide a quantitative threshold for disclosure of short-term borrowings by category.

The instructions to Guide 3, Item VII, *Short-Term Borrowings*, provide that the Item VII short-term borrowings information is not required to be given for any category of short-term borrowings for which the average balance outstanding during the period was less than 30 percent of stockholders' equity at the end of the period.

Any final rules should include a similar threshold for all companies subject to the rules. The inclusion of a reporting threshold will prevent companies that have not relied on certain categories of short-term borrowings to a significant extent during a reporting period from collecting and presenting immaterial information in their quarterly and annual reports and registration statements. We understand that certain companies, particularly non-financial companies, do not, as a general matter, utilize short-term borrowings or certain categories of short-term borrowings to a material extent. While these companies track short-term borrowings generally throughout the period, they do not track these borrowings with the degree of precision required to report all of the information called for by the Proposed Amendments. The inclusion of a reporting threshold would prevent companies from having to update their systems and disclosure controls and procedures in order to track immaterial categories of short-term borrowings with the degree of precision needed for SEC reporting purposes.

3. Like Guide 3, the final rules should provide that where the collection of data on a daily average basis would involve unwarranted or undue burden or expense, weekly or month-end averages may be used, provided such averages are representative of the operations of the registrant.

The Proposed Amendments would require registrants that are "financial companies" to compile and report data for the maximum daily amounts outstanding and the average amounts outstanding during the reporting period computed on a daily average basis. The proposed definition of "financial company" would include registrants that, during the relevant period, are engaged to a significant extent in the business of lending, deposit taking, insurance underwriting or providing investment advice, or are brokers or dealers as defined in the Securities Exchange Act of 1934, as amended. The Commission recognizes in the proposing release that while it believes most banks would be able to track daily short-term borrowings without unreasonable effort or expense, other "non-bank" financial companies do not currently track this information on a daily basis and could incur "significant costs" to comply with these new requirements. This observation is consistent with our experience—many non-bank financial companies do not have systems in place that are capable of tracking and reporting the proposed information on a daily basis with the degree of precision needed for SEC reporting purposes. These companies have expressed concerns that the imposition of this new requirement will be a significant burden. Accordingly, any final rules should include an exception similar to General Instruction 4 of Guide 3 which permits the use of weekly or month-end averages, "where the collection of data on a daily average basis would involve unwarranted or undue burden or expense," provided such averages are representative of the operations of the registrant.

4. Like Guide 3, any quantitative disclosure of new short-term borrowing requirements should be imposed on foreign registrants only to the extent the requested information is available and can be compiled without undue burden or expense.

General Instruction 6 of Guide 3 provides that the disclosure requirements of the Guide are also applicable to foreign registrants to the extent the requested information is available. If the information is unavailable and cannot be compiled without unwarranted or undue burden or expense, Guide 3 invites foreign registrants to bring these issues to the staff's attention. The instructions also provide that in evaluating the reasonableness of assertions by registrants that the compilation of requested information, such as historical data or daily averages, would involve an unwarranted or undue burden or expense, the staff takes into consideration, among other factors, the size of the registrant, the estimated costs of compiling the data, the electronic data processing capacity of the registrant, and efforts in process to obtain the information in future periods.

A similar instruction should be included in any new quantitative disclosure requirements for short-term borrowings. Like Guide 3 data, foreign private issuers may not have systems capable of tracking the proposed information, particularly daily information, under the comprehensive set of accounting principles used for SEC reporting purposes. This is particularly true for foreign private issuers that prepare their financial statements and record and process financial information in accordance with a home country GAAP that is different from the comprehensive set of accounting principles they use for SEC reporting purposes. These foreign private issuers typically convert to the comprehensive set of accounting principles used for SEC reporting purposes only once or twice a year, such as when they are required to report on Form 20-F. To require these foreign private issuers to update their systems to convert from their home country GAAP to the set of accounting principles used for SEC reporting on a daily or even monthly basis in order to comply with this one reporting requirement would impose undue burden and expense.

The staff has recognized these difficulties and granted relief to foreign private issuers under Guide 3 in suitable circumstances. Because the same concerns that exist for foreign private issuers subject to Guide 3 also exist for foreign private issuers that would be subject to the

Proposed Amendments, the Commission should include similar guidance in any new short-term borrowing disclosure requirements.

5. Transition Period and Prospective Application.

The Proposed Amendments would require annual disclosure for the preceding three years but include a transition period for registrants that are not bank holding companies or subject to Guide 3 that would, for purposes of the annual reporting requirement, permit those companies to phase in compliance with the proposed annual disclosures so that (1) in the initial year of compliance, these companies would only be required to include short-term borrowings information for the most recent fiscal year; (2) in the second year of compliance, these companies would only be required to include short-term borrowings information for the most recent two fiscal years. Thereafter, companies would be required to include disclosure for each of the three most recent years.

As discussed above, companies will need to update their data gathering systems and implement disclosure controls and procedures in order to track and report the information called for by the Proposed Amendments. Accordingly, the effective date and transition period under the final rules should provide companies ample time, preferably at least one annual reporting cycle, to implement and test appropriate systems and procedures before having to report the information called for by the Proposed Amendments. The final rules should also make it clear that the transition period would not only apply upon the Commission's initial adoption of the rules, but would also apply to companies that subsequently become subject to all or part of the rules due to an initial public offering or a change in status. For example, to the extent a non-financial company becomes a financial company, it should have the benefit of a transition period for purposes of providing daily versus monthly averages. Similarly, if a company acquires a subsidiary that was not previously subject to the rules, the company should be entitled to utilize the transition period with respect to that subsidiary's historical information, subject to adequate disclosure explaining the omission of the subsidiary's historical information.

6. The Commission should not impose a blanket leverage ratio disclosure requirement.

The Commission has asked whether all registrants should be required to disclose a leverage ratio and if so, how "leverage ratio" should be defined in this context. The simple answer to this question is no. While we understand the Commission's goal of providing investors with a true picture of a company's leverage, we do not believe that adding a one-size-fits-all leverage ratio to existing requirements will further this goal. Companies are already required to disclose substantial information about their leverage (1) on their balance sheet, (2) in their debt obligations footnote, (3) in the contractual obligations table, (4) in disclosure of off-balance sheet arrangements and (5) in other liquidity and capital resources disclosures. If adopted, the Proposed Amendments would also provide additional quantitative and qualitative information about companies' short-term borrowing practices. In light of these extensive disclosure requirements, the addition of leverage ratio disclosure will not provide investors with any meaningful perspective on a company's leverage profile not already provided by current disclosure requirements.

Rather, a blanket leverage ratio disclosure requirement could lead to confusion, particularly for less sophisticated investors who are more likely to rely on the ratio without appreciating how ratios necessarily vary across different industries. Most sophisticated investors and analysts already create their own models and calculate their own leverage ratios based on existing disclosures. A mandatory leverage ratio disclosure is likely to be of little use to these investors. Less sophisticated investors, however, may be more likely to focus on the leverage ratio and may place too much emphasis on it without fully appreciating the different leverage characteristics among companies operating in different industries and with different types of borrowing practices. Lenders and analysts currently make a variety of adjustments to leverage ratios and customize the ratios based on a company's industry. A blanket leverage ratio disclosure requirement will not reflect these types of adjustments and customization, making it less relevant for analysis.

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Overall, we believe that the Commission's goal of providing more transparency regarding a company's leverage is better served by continuing to focus on compliance with existing liquidity and capital resources disclosure requirements than by imposing additional prescriptive requirements. The Commission's recent guidance on liquidity and capital resource disclosure and the staff's recent "Dear CFO" letters each emphasize the need for companies to provide more transparent and precise disclosure of material short-term and intra-period borrowing practices. The Commission and staff's continued focus on the disclosure of material short-term borrowing practices through the issuance of guidance and the comment process is more likely to elicit meaningful disclosure than the imposition of additional prescriptive requirements. To the extent the Commission does decide to impose new prescriptive requirements, the Commission should continue the relief provided in Guide 3 for insignificant categories of short-term borrowings, daily averages and foreign private issuers. The Commission should also include an ample transition period for any new rules so that companies will have sufficient time to update their data gathering systems and implement the disclosure controls and procedures necessary to track the information called for by the Proposed Amendments.

We appreciate the opportunity to participate in this process, and would be pleased to discuss our comments or any questions the Commission may have with respect to this letter. Any questions about this letter may be directed to Richard Sandler, Alan Dean or Janice Brunner at 212-450-4000.

Very truly yours,

DAVIS POLK & WARDWELL LLP