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December 13, 2004

Mr. Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street N.W.  
Washington, D.C. 20549-0609



RE: File No. SR-NASD-2004-022

Dear Mr. Katz:

Our firm is active in the representation of placement agents, hedge funds and other investors in PIPE transactions, equity credit lines, and other similar structured finance transactions. We appreciate the opportunity to present our views to the Commission with regard to the above proposed rule change by the National Association of Securities Dealers ("NASD") relating to the Corporate Financing Rule and the shelf offering of the securities.

We believe that the rule proposal is ill advised, and as currently drafted, will act as a significant constraint on the ability of issuers to raise capital, which may adversely affect the continuing viability of some of those issuers, and as a consequence, the investment of their existing shareholders. The proposal will hamper the ability of investors - especially in PIPE and equity line transactions - to timely liquidate their positions, and is contrary to the policy reasons underlying the Commission's adoption of Rule 415 under the Securities Act of 1933. NASD has presented no empirical evidence as to any abuses with respect to the matters addressed by the proposed Rule change.

A. We appreciate the NASD's concern that a member may receive excessive compensation if the member enters into an underwriting, distribution, equity line or other agreement with the issuer with respect to the sale of securities offered, and subsequently acts as the broker for a selling security holder. We believe that if the concern is solely regarding excessive compensation, the proposed rule should apply only if the participating member, acting as the broker for the selling

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security holder, has entered into an underwriting, distribution, equity line or other agreement with the issuer with respect to the sale of securities offered. The rule should specifically except from its ambit unsolicited market transactions by selling security holders [cf. Rule 144(g), defining "Brokers Transactions"].

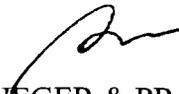
B. The exception for securities listed on the NASDAQ Stock Market or the National Securities Exchange (Proposed Rule 2710(b)(10)(B)(ii)) is discriminatory. By making the rule mandatory for all OTCBB transactions, NASD is able to discourage listings on the OTC Bulletin Board and require issuers to list on the NASDAQ Stock Market with its attendant higher costs and listing fees. While NASD states that it "has a significant regulatory interest in the public distribution of shelf registered securities of thinly traded issuers quoted on the OTC market" (Proposed Rule Change n.15), that interest should not be used to effect discriminatory treatment of OTCBB listed issuers and their investors.

C. We note that selling security holders generally lack access to the COBRADesk System or other means to quickly and effectively communicate with the NASD prior to a planned sale, and thus ascertain as to whether the transaction is subject to the rule, and if subject to the rule, whether prior filings have been made. While the release says that the NASD "proposes to develop an automated review and clearance process for Subsequent Member Filings" and provide expedited review, no such system is currently in place. If the Commission decides to approve the proposed rule change - in whole or in part - it should delay the effectiveness until such automated system is in place, has been actually tested, and NASD has sufficient trained personnel to administer the system.

For reasons set forth, we believe the proposed rule change should not be approved as currently drafted.

Thank you for the opportunity to express our views.

Very truly yours,



KRIEGER & PRAGER, LLP