SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

March 16, 2010

Elizabeth M. Murphy, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. S7-04-10 (Purchases of Certain Equity Securities by the Issuer and Others)

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals appreciates the opportunity to respond to the request for comments made by the Securities and Exchange Commission (the "Commission") in its proposed rule entitled "Purchases of Certain Equity Securities by the Issuer and Others."

The Society of Corporate Secretaries & Governance Professionals is a professional association, founded in 1946, with 3,100 members who serve more than 2,000 companies. Our members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members are generally responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements. The majority of Society members are attorneys, although our members also include accountants and other non-attorney governance professionals.

We are commenting on a handful of selected questions posed by the Commission in the proposing release.

We believe the safe harbor should be available regardless of whether insiders are selling stock.

The proposing release requests comment on whether the Rule 10b-18 safe harbor should be available for issuer repurchases during periods when insiders are selling shares of the issuer's stock. We believe the safe harbor provided by Rule 10b-18 for issuer repurchases should be available regardless of whether insiders are selling stock. Insiders sell stock for many different reasons, including estate planning, diversification and liquidity needs. Issuers engage in repurchase programs for capital management purposes. The legitimate reasons for insiders to sell are independent of, and unrelated to, the equally legitimate reasons for issuers to repurchase stock. Requiring insider sales to cease before an issuer can repurchase stock would severely limit legitimate Rule 10b-18 repurchase programs by issuers to the detriment of the issuer's stockholders. We do not believe that limiting such repurchase programs during periods of insider sales benefits market participants.

We note the concern that insiders might use their ability to direct the issuer's repurchase program to support the market price of the issuer's stock at a time when the insiders intend to sell their

own shares of stock. However, Rule 10b-18 is designed specifically to reduce the possibility of manipulation or support of the issuer's stock price. Therefore, when the issuer's repurchases are properly conducted in accordance with the criteria of Rule 10b-18, we do not believe there should be a flat prohibition on simultaneous sales by insiders. Finally, the Rule 10b-18 safe harbor is not available when there are sales of securities by an issuer or certain of its stockholders that are "distributions" under Regulation M. Accordingly, Regulation M already provides protections for the marketplace in situations where insider sales are of a magnitude or a nature that would affect the market price of an issuer's stock.

We have also considered the potential misuse of an insider's knowledge regarding a repurchase program to benefit the insider's sale of stock. However, we believe the current prohibitions on the use of material nonpublic information are a sufficient protection against the misuse of information. Prohibiting all issuers from conducting their repurchase programs because of fears of this potential misuse is more than a prophylactic measure; it is an unduly stringent constraint on proper activities intended to benefit an issuer's stockholders.

We note that issuers often announce repurchase programs to inform the public that they will be engaging in market transactions. The repurchases may be spread-out over a period of time (perhaps a year or more) in order to reduce the possibility the issuer's repurchase activity will increase the share price and thereby increase the cost of the program to the issuer. If issuers are required to suspend their repurchase programs during times when insiders are selling stock, we believe that this could have the unintended consequence of issuers repurchasing larger amounts of stock in shorter time frames.

In addition, not only do issuers often implement their repurchase programs over a period of time, but, similarly, insiders often enter into Rule 10b5-1 plans to sell their shares over extended periods of time. Such long-term plans by either the issuer or the insiders may effectively preclude the other parties from effecting securities transactions for significant periods of time. As a consequence, issuers may choose to prohibit their insiders' use of Rule 10b5-1 plans, which we believe is an undesirable outcome. Further, we do not believe it is a sensible solution to create a flat prohibition on the use of Rule 10b-18 during insiders' sales (and then perhaps need to create an exception for situations involving the proper use of insider Rule 10b5-1 plans), since we believe the legitimate activities of both issuers and insiders should be permitted to exist simultaneously.

We believe the Rule 10b-18 safe harbor should not be conditioned on additional issuer disclosure.

The proposing release requests comment as to whether the availability of the Rule 10b-18 safe harbor should be conditioned on the issuer complying with the disclosure requirements of Item 703 of Regulation S-K, real-time disclosure of repurchases or the availability of current financial information. We believe the safe harbor should not be conditioned on additional issuer disclosure on these matters.

Rule 10b-18 is designed to ensure that issuers do not manipulate the market price of their shares. The Rule 10b-18 criteria relate to the conduct of the repurchases at the time of the transactions.

A subsequent failure to provide Item 703 disclosure does not make the prior repurchases manipulative.

Similarly, we do not believe that any real-time disclosure of issuer repurchases should be required. Issuers are currently required to disclose their repurchases on a quarterly basis. In our view, there is no evidence that real-time disclosure would contribute meaningfully to market integrity, and we believe that real-time disclosure would require an inordinate amount of time and effort for the issuer. We also believe that other market participants may seek to use real-time information to take advantage of the issuer's repurchase activities, potentially making the repurchases more expensive for the issuer and its stockholders.

Finally, we believe the absence of current financial information should not preclude the issuer from relying on the Rule 10b-18 safe harbor since it does not increase the likelihood that the manner of the repurchases is manipulative. Section 10(b) of the Securities Exchange Act of 1934, as amended, already imposes liability when an issuer is in possession of material non-public information at the time the repurchase is executed. We do not believe that a further remedy is necessary.

We do not believe special record-keeping obligations should be imposed on issuers in connection with Rule 10b-18 repurchases.

The proposing release asks for comment on whether issuers should be required to maintain records regarding Rule 10b-18 repurchases. We do not believe that such an obligation should be imposed on issuers. Detailed trading records are maintained by the broker executing the repurchases on behalf of issuer. While the issuer could obtain trading records from the broker, the issuer would be unable to verify the accuracy of the trading information. We believe that requiring issuers to maintain these records is redundant and will impose a burden on issuers without any corresponding benefit to the market.

The definition of "Rule 10b-18 VWAP purchase" should not include a subjective element regarding intent because the broader anti-avoidance principle is sufficient.

The proposed definition of "Rule 10b-18 VWAP purchase" includes a requirement that the purchase not be effected for the purpose of creating actual, or apparent, active trading in or otherwise affecting the price of any security. We agree that issuer repurchases made for this purpose should not have the benefit of the Rule 10b-18 safe harbor. However, this condition is unnecessary in light of the Preliminary Note 1 to Rule 10b-18, which provides that "the safe harbor . . . is not available for repurchases that, although made in technical compliance with the section, are part of a plan or scheme to evade the federal securities laws." In addition, all the other provisions in the current and proposed Rule 10b-18 are objective in nature, and the introduction of a subjective element could cause unnecessary confusion and limit the usefulness of the proposed modification with regard to VWAP purchases.

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We appreciate the opportunity to comment on these important proposals and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

The Society of Corporate Secretaries & Governance Professionals

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