SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

April 1, 2011

VIA ELECTRONIC DELIVERY

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

Re: Comments on Proposed Revisions to Forms S-3 and F-3
File Number S7-18-08; Release No. 33-9186

Dear Ms. Murphy:

The Society of Corporate Secretaries & Governance Professionals (the "Society") appreciates the opportunity to respond to the request for comments in the release entitled *Security Ratings*, SEC Release No. 33-9186 (February 9, 2011) ("Proposing Release") issued by the Securities and Exchange Commission (the "Commission").

Founded in 1946, the Society is a professional membership association of more than 3,100 attorneys, accountants, and other governance professionals who serve approximately 2,000 companies of most every size and industry. Society 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 generally are responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Summary

The Proposing Release was issued in response to the requirement in Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act") that Federal agencies modify regulations to remove any reference to, or requirement of reliance on, credit ratings, and to substitute a standard of credit worthiness as the agency determines to be appropriate. The proposed rules would eliminate the use of investment grade credit ratings as a criterion for Form S-3 eligibility. Instead, the proposed rules would substitute a requirement that an issuer have issued at least $1 billion of non-convertible securities in transactions registered under the Securities Act of 1933, as amended (the "Securities Act"), other than equity securities, for cash during the past three years as a criterion for Form S-3 eligibility.

The Commission's proposed requirement of the issuance of $1 billion in registered non-convertible securities over the preceding three years sets a high standard, one that many issuers that currently meet the investment grade criteria may not meet and is well above what is necessary to ensure a wide following in the marketplace. Also, it is substantially in excess of the thresholds in other criteria for Form S-3 eligibility. For example, currently issuers with only $75 million of public equity float are eligible for unlimited use of Form S-3, and even smaller

reporting companies with less than $75 million of public equity float can use Form S-3 in certain circumstances.

The Society believes that the Commission's proposed criteria is, by itself, not an appropriate alternative standard for Form S-3 eligibility, because it would result in the loss of such eligibility by a number of issuers of debt securities that are in fact well known and widely followed in the marketplace. The Society respectfully requests that the Commission adopt alternate criteria that are designed to replace, as closely as possible, the existing pool of eligible issuers. We recommend that the Commission permit the use of Form S-3 by majority-owned subsidiaries of well known seasoned issuers ("WKSIs") that have $1 billion in assets or $1 billion in outstanding debt securities, provided that such subsidiaries otherwise meet the Registrant Requirements of General Instruction 1.A. of Form S-3. We believe that debt issuers meeting these criteria would be widely followed in the market and therefore should continue to be eligible to use Form S-3.

The Proposed Rules Should Maintain Eligibility for Issuers That Use Form S-3

We believe that the alternate criteria are consistent with the legislative history of the Dodd-Frank Act as set forth in Section II.A.3 of the Proposing Release: "The legislative history does not indicate that Congress intended to change the types of issuers and offerings that could rely on the Commission's forms." In addition, neither Congress nor the Commission has found that issuers using investment grade credit ratings as the criterion for eligibility to use Form S-3 have presented any particular risk to investors or were associated with abuses in the markets. Accordingly, we believe that any criteria adopted by the Commission to replace the investment grade credit rating criterion should be designed to maintain the eligibility of the companies currently using Form S-3 because they meet the investment grade criterion.

We believe that a number of companies rely on the investment grade test, in particular subsidiaries of WKSI, that are utilities, insurance companies or REITS or financing subsidiaries of large manufacturers. While the Proposing Release recognizes that certain issuers may lose eligibility to use Form S-3 under the Proposing Release, we are concerned that the Release underestimates the effect of the change. The loss of eligibility to use Form S-3 would present significant problems for issuers that are currently eligible. The use of Form S-1 to register debt offerings would significantly increase the cost and time to prepare for the offering. As the Commission is aware, Form S-1 affords issuers less flexibility in the amount of debt to be issued and the timing of the issuance. Issuing debt in exempt offerings is often an unattractive alternative, since such offerings will likely result in additional costs for issuers, such as higher coupon rates and costs associated with registration rights. Companies choosing this option also would be disadvantaged in that securities issued in exempt offerings would not be counted toward their future eligibility to use Form S-3 under the Commission's proposed issuance test.

While the Society's alternative proposal does not address all issuers that are currently eligible to use Form S-3 but that would lose eligibility under the Commission's proposal, we support efforts by the Commission and other commenters to minimize the number of issuers that will lose eligibility. The Society is aware of other proposals by commenters that suggest thresholds lower than $1 billion. We believe lower numbers might be merited if the Commission finds that such issuers are in fact well known and widely followed in the marketplace.

The Proposed Rules Should Specifically Provide for Eligibility for Majority-Owned Subsidiaries of WKSIs

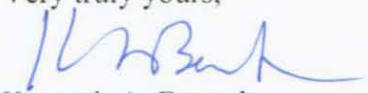
We believe that a reporting company, a majority of whose common equity is held by a WKSI, that has either $1 billion in assets or $1 billion in 1933 Act-registered debt outstanding, should be eligible to use Form S-3 provided that it otherwise meets the Registrant Requirements of General Instruction 1.A. of Form S-3. Subsidiaries having either $1 billion in assets or $1 billion in debt outstanding are large enough to ensure that the issuer would be subject to the level of scrutiny, market coverage and analysis cited in the Proposing Release as a proper substitute for an investment grade security rating as a criterion to permit the use of Form S-3. We believe also that this level of outstanding debt or assets would be sufficient to ensure that the issuer attracts significant analyst and investor attention.

In this regard we would also propose that the debt securities that would be counted to satisfy the $1 billion threshold under this test include not only debt securities issued in primary registered offerings for cash, but also those issued in exempt offerings (such as Rule 144A offerings) and those issued in registered exchange offers (provided that the securities were not double-counted, both when originally issued in an exempt offering and again when registered in an exchange offering). We believe it is appropriate to include all such debt securities because a substantial portion of the market for debt securities consists of institutional investors that purchase debt securities in both Rule 144A offerings as well as registered offerings.

Conclusion

The loss of Form S-3 eligibility will have a negative effect on a number of subsidiaries of WKSIs that are utilities, insurance companies and REITS, and on financing subsidiaries of large manufacturing companies, among other companies, that are widely followed debt issuers. For the reasons stated above, the Society believes that the Commission should provide alternative criteria to make Form S-3 available to substantially all companies that currently rely on the investment grade criteria. We believe that the alternate criteria should specifically enable a subsidiary of a WKSI with at least $1 billion in outstanding debt securities or $1 billion in assets to use Form S-3 because such a company would be widely followed in the marketplace.

Very truly yours,



Kenneth A. Bertsch
President and CEO

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