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By Electronic Mail (rule-comments@sec.gov)

March 28, 2011

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

Re: Security Ratings; Release No. 33-9186; 34-63874; File No. S7-18-08

Dear Ms. Murphy:

We appreciate the opportunity to comment on the proposed rulemaking by the Securities and Exchange Commission (the "Commission") with respect to the eligibility requirements for the use of Forms S-3 and F-3 under the Securities Act of 1933 (the "1933 Act"). McGuireWoods regularly provides counsel in public debt offering transactions and represents, among other clients, numerous energy, utility and financial services companies with operating subsidiaries who may suffer immediate or eventual ineligibility after many years of using Form S-3 if the changes to Form S-3 eligibility become effective as proposed.

We believe the Commission's rule changes as proposed could significantly curtail the improved access to the public securities markets that the Commission effected when it adopted the Securities Offering Reform rules in 2005, and we respectfully submit this letter reflecting our comments. In lieu of the Commission's proposal, we would support the following:

A. The Rules Should Establish Automatic Form S-3 Eligibility for 1934 Act Reporting Subsidiaries of Well-Known Seasoned Issuers.

As many commenters articulated in response to the Commission's substantially similar rule proposals in 2008 and 2009, and in response to the current rule proposal, we are concerned that the proposed rules will adversely affect a large number of current Form S-3 eligible issuers. In particular, we are concerned for those companies that are subject to periodic filing requirements under the Securities and Exchange Act of 1934 (the "1934 Act"), but as wholly-owned subsidiaries, do not meet the public equity float test for Form S-3.

The Commission noted that it had identified approximately 45 issuers previously eligible to use Form S-3 that would lose eligibility under the proposed rules, and acknowledged that this conclusion was based on its analysis which was only inclusive of issuers who made a registered offering during the period from January 1, 2006 to August 15, 2008. We note that analysis conducted by the Capital Markets Committee of the Securities Industry and Financial Markets Association ("SIFMA") and presented to the Commission by letter on March 18, 2011, concluded that at least 60 of just the 120 companies in the electric utility sector that SIFMA examined would lose eligibility under the proposed rules because they had issued less than $1 billion of debt during a more recent look-back period (March 2008-March 2011) and did not meet the $75 million public float test (and were presumably relying on the investment grade ratings test for their S-3 eligibility).

We believe that this is an unintended consequence of the proposed rules, which can be remedied by establishing automatic eligibility for reporting subsidiaries of Well-Known Seasoned Issuers.

The essential benefits of Form S-3 eligibility are the ability to incorporate prospectively by reference periodic reports filed under the 1934 Act and to access the markets via off-the-shelf offerings not requiring effectiveness orders specific to the time of takedowns. Wholly-owned subsidiaries and their WKSI parents are permitted to and often do file combined periodic reports and make use of the reduced disclosure format provided by General Instruction (I) of Form 10-K. These affiliated companies tend to have substantially overlapping disclosure content. They generally share the same wide following in the marketplace. We believe that these affiliated companies should be treated similarly in their ability to access the markets expediently and efficiently via shelf offerings and incorporation by reference. We would condition our proposed eligibility criteria upon substantially all of the subsidiary's voting securities being held by the WSKI parent company and the subsidiary's having timely filed all required 1934 Act reports with the Commission for a period of 12 months prior to use of Form S-3.

Our approach is wholly consistent with the Commission's statement in its release adopting the S-3 eligibility rules that its intention was to "classify registrants on the basis of the degree of information disseminated and analyzed in the marketplace." (46 Fed. Reg. at 41,905 (August 18, 1981)). In the energy and utility industry, for example, the assets and revenues of state-regulated operating subsidiaries often comprise all or a substantial portion of the consolidated assets and revenues of the WKSI parent holding company. We believe that many of these operating subsidiaries are as well known as the parent holding company and are as widely followed by the market, both independently and in connection with their parent holding company. The eligibility rule as proposed by the Commission would result in some subsidiaries of the WKSI parent company being ineligible to use Form S-3, notwithstanding that these subsidiaries and their respective parents have comparable followings in the marketplace. In this era of electronic delivery of information and full accessibility to companies' 1934 Act filings, we believe that the use of the more complex Form S-1 and the more cumbersome market access process are not necessary for these companies.

B. The Rules Should Establish a Lower Debt Issuance Threshold and Longer Look-Back Period for Form S-3 Eligibility than the Debt Issuance Threshold for WKSI Eligibility.

Although the $1 billion over three years debt issuance threshold may be an appropriate test for the ability to use automatically effective and unlimited amount shelf registration statements available to WKSIs, we believe that this test is more stringent than necessary for general Form S-3 eligibility. WKSI status should be available to a narrower segment of the universe of issuers than Form S-3 eligibility status. A differential in standards would be entirely consistent with the nearly ten-fold difference in the public equity float requirements for the two definitions -- the WSKI public equity float requirement is $700 million whereas the Form S-3 public float requirement is only $75 million.

Another issue is presented by the three year look-back period, at least when the 2008-2010 period is considered. Because of the recession and corresponding disruption in the credit markets, even historically active issuers stood on the sidelines during much of this period. Consequently, we suggest that the Commission lower the threshold amount for debt issued and/or extend the three year look back to a longer period. We support a $250 million debt issuance threshold and five year look back.

In addition, as others in the energy industry in particular have suggested, the recession corresponded with a less active phase of major infrastructure development in the United States. Currently our economy appears to be reviving and many energy companies have announced plans to undertake large development projects. Because of the cyclical nature of major utility infrastructure construction projects and the utilities' corresponding capital needs, the $1 billion debt issuance threshold over a three-year period proposed by the Commission is particularly inappropriate for the energy industry.

Furthermore, in calculating whether an issuer has issued the threshold level of non-convertible securities within the look-back period, we advocate that issuers should be permitted to count securities issued for cash pursuant to Rule 144A. We believe that Rule 144A issuance information becomes part of the total information package that contributes to the wide following in the marketplace that the Commission emphasizes in the proposing release. Inclusion of the amounts in Rule 144A issuances may increase the likelihood that issuers will reach the appropriate dollar threshold and be able to eventually undertake Form S-3 registration of their debt securities in future issuances. Without including Rule 144A securities, these issuers would perpetually be excluded from Form S-3 shelf registration eligibility and will be forced to rely only on unregistered offerings for their financing needs.

Similarly, we also urge the Commission to allow the inclusion of securities issued in registered exchange offers in calculating the debt issuance threshold (except for double counting of Rule 144A issuances). Exchange offer securities offerings are also part of the information package about issuers and contribute to the degree to which issuers are widely followed in the marketplace.

C. The Rules Should Establish a Parallel Form S-3 Eligibility Test Tied to Public Debt Float.

In addition to the establishment of a lower debt issuance threshold and longer look-back period, we believe that S-3 eligibility should also be available for issuers having a certain amount of long-term debt outstanding at the time of the filing of its registration statement. We believe that significant public debt float is a valuable measurement of a wide following in the marketplace. Additionally, having debt float as an alternative test for eligibility would remove any pressure that issuers may feel to conduct untimely or unnecessary offerings only to satisfy a somewhat arbitrarily selected debt issuance threshold and look-back period. We support a $250 million debt public debt float provision.

Conclusion

We urge the Commission to revisit its proposed rules following its review of the numerous alternatives that are being articulated by issuers and practitioners in response to the proposing release and its predecessors. We believe that if alternative measures are not adopted, the Commission's proposal will put many issuers at a disadvantage, increase the companies' costs of capital, and negatively impact many frequent issuers that timely file closely-followed periodic reports, simply because of a period of inactivity in their debt issuances during the economic recession. Furthermore, the requirement that issuers be particularly active in the capital markets was not a requirement under the investment grade criteria. The changes proposed by the Commission would increase financing expenses with no corresponding informational or other benefit for the market.

As a result of the time and expense that would be associated with continually updating shelf registration statements on Form S-1, we believe these issuers will increasingly rely on private offerings, with the eventual effect of preventing retail investors from being able to purchase registered securities. These impacts are absolutely contrary to the spirit behind the Commission's 2005 Securities Offering Reform rules, which was to streamline the securities offering process by eliminating unnecessary procedural hurdles and recognize advancements in the means that issuers use to communicate with investors.

We thank the Commission for the opportunity to comment on the proposed rules. Should you have any questions regarding our comments, please do not hesitate to call Jill Misage Webb at 804-775-1180.

Very truly yours,

McGuireWoods LLP

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