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February 12, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549-1090

Re: File Number S7-20-06

Ladies and Gentlemen:

I am writing to present my views of the Securities and Exchange Commission's proposed amendments to Regulation M, Rule 105 that were set forth in Release No. 34-54888 (the "Release"). I appreciate the time and attention that the Commission and its Staff afford to the comment process. The issues presented in the proposed amendments and the questions raised in the Release reflect the difficulties that arise when endeavoring to regulate the price discovery and price determination process in any market, let alone ones with the volume of the equity markets in the United States. The central issue is simply this: under the present rule, do the Commission and its Staff have sufficient tools to address manipulative activity that may occur around secondary offerings<sup>1</sup> of equity securities, or are new tools needed to maintain and enhance investor confidence in the securities markets. Restoring or enhancing investor confidence is a phrase used regularly in referring to the securities markets and the purposes of the Federal securities laws. Properly understood, it refers to investors having a well-founded belief that the prices that are being quoted are fair and determined by market forces of supply and demand, free from activity by those having informational advantages or manipulative intent.

The basic tenet of the primary market for securities in which issuers bring securities offerings to the investing public is that the issuer and its underwriters present material information to investors, including, ultimately, the price of the securities being offered. Only

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<sup>1</sup> I use the term "secondary offering" to refer to follow-on offerings by the issuer, in which the company raises new capital, offerings of securities by selling shareholders, and combination offerings in which both of the foregoing occur.

then is the investor expected to make a binding determination whether to participate in the offering. Current Rule 105 interferes minimally with that basic premise by requiring persons that have determined to sell short during a period of time prior to the offering to not cover those short sales with shares from the offering, but rather to cover at risk in the open market. Thus, an investor retains the usual freedom to formulate and change its views of the desirability of a security based upon that most material item of information, namely the price at the time.<sup>2</sup> The proposed amendments to Rule 105 (referred to as "Proposed Rule 105") by, as a practical matter, forcing the investment decision point earlier in time, would take from an investor the opportunity to observe the market and the information contained in the prices at which the security trades before it decides to participate in the offering. As discussed below, the proposed amendments would prohibit this most fundamental aspect of an investor's decision making process and would have an adverse impact on capital raising through secondary offerings.

Proposed Rule 105 would alter in a major way the pricing mechanism for securities that are the subject of a secondary offering from that for all other securities. Proposed Rule 105 would bar from participation in such an offering all those persons that engage in any short sales of that security during the relevant restricted period, five (5) business days for most stocks. Thus, investors would have to decide whether the issue will perform well or underperform a full week before the issuer and underwriters determine the offering price and without the opportunity to observe normal market price discovery associated with secondary offerings. Thus, an investor must make its decision about whether to invest in a security being offered well before the secondary offering is priced. This is a massive and unprecedented change in the securities laws and one that I cannot see having a beneficial effect for investors, whether large or small, active traders or buy and hold, or otherwise. Whatever the investment horizon an investor may have when it makes an investment, it has in all other circumstances been a central tenet of investor protection that investors be informed of material information prior to making an investment decision. It is without question that pricing during the five day pre-pricing period is material to investors. Thus, the proposed change will require investors to make an investment decision about a proposed offering at a time that they are at a severe informational disadvantage and at a time that is unprecedented under the securities laws. For this reason alone, I believe that the proposed amendment is misguided and should not be adopted in its present form.

The purpose of Rule 105, both in its present and proposed forms, is to prevent an artificial depression in the market price of the security that is to be offered. I submit that the economic limits afforded by present and proposed limitations on short sales generally, and the limitations on covering short sales made during the restricted period under current Rule 105, are sufficient to achieve the Commission's regulatory goals. I note that an equally laudatory purpose is to prevent artificial inflation of the price of the security. Unfortunately, Proposed Rule 105, through its distortion of the price discovery process for investors, will grant issuers and

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<sup>2</sup> To be sure, the investor must be careful to trade out of its short position in a manner compliant with Rule 105, a small burden compared to the prophylactic benefits the Commission has determined are afforded to the integrity of the pricing system by the present rule.

underwriters power to price secondary offerings without any market counterbalance. Keeping the balance between investors and issuers is the purpose of Rule 105. I believe that current Rule 105 largely achieves that.

Short selling has long been viewed by the Commission as an important force for preventing long side manipulation and promoting the integrity of the offering price. The Commission has appropriately limited short selling through its requirements that a short seller have a “locate<sup>3</sup>” and, at least until the implementation of the short sale pilot, comply with “tick” or “bid” tests.”

It is well known that secondary offerings ordinarily price at a discount to the closing price on the day of the offering.<sup>4</sup> I have not identified any articles in the financial economics literature that provide a deep analysis related to the likely discounts to price five trading days before pricing. Such an analysis would be instructive and I would encourage the Commission and its Staff to complete such a study and make those results available before making the proposed dramatic change to the investment decision making process related to secondary offerings.

What is obvious is that the market clearing price for a large block of stock, whether dilutive through an issuer follow-on or a transfer of risk and potential benefit from selling shareholders to the investing public, is significantly lower than the market clearing price for 100 or 1000 shares. Determination of the market clearing price for the offering should involve as much investor participation as possible, free from artificial restrictions to the maximum extent reasonable so that investors will be confident in the pricing mechanism. Indeed, the article cited in the Release at footnote 39, Corwin’s Determinants of Underpricing for Seasoned Equity Offerings, states:

“After the implementation of increased short sale restrictions through Rule 10b-21<sup>5</sup>, I find that large price moves in either direction lead to more underpricing. One possible explanation for this result is that prices are considered less informative in the presence of

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<sup>3</sup> To ensure that the buyer in a short sale will not be disadvantaged, the seller is required to obtain a commitment from a lender of securities that the short seller can borrow and so make delivery to the buyer. This results in a natural economic limit on the amount of short-selling as the cost and availability of the borrow must be taken into account by the short seller. Locate requirements provide an important limit on the ability to manipulate the price of a secondary offering during the restricted period.

<sup>4</sup> In addition to the article cited in the Release at footnote 39, see Simon Mola and Tim Loughran, Discounting and Clustering in Seasoned Equity Offering Prices <http://www.nd.edu/~tloughra/discount.pdf> and Simon Mola and Tim Loughran, Trends in Seasoned Equity Offering Discounts <http://www.nyse.com/pdfs/seodiscounts.pdf>. These two articles present an analysis that, on average, seasoned equity offerings price at a discount of 3.3% to the prior closing price.

<sup>5</sup> Corwin’s data sample was from January 1, 1980 through December 31, 1998, and thus does not reflect the market after the adoption of Regulation M.

increased short sale restrictions and large price moves are associated with more uncertainty.<sup>6</sup> [emphasis added]”

Thus, any regulatory distortion of natural market forces should be taken with extreme caution.

It is of equal importance that Proposed Rule 105 is not likely to benefit issuers. I believe that, if the proposed amendment is adopted, there will continue to be a number of market participants who elect to short the stock due to the expected dilutive effect of the offering and forego participating in that offering.. Accordingly, the proposed rule will reduce the number of buyers for the secondary offering since investors choosing to short will not only be prohibited from using the newly issued securities as cover (as they are today) but they will also be prohibited from participating in the offering at all. Given the necessity of choosing between executing short sales and participating in the offering, I expect that many investors may conclude that shorting prior to the offering will provide a more reliable price for the security involved, free from artificial influences. The market clearing price for a block the size of a typical registered offering will be adversely affected if the buying pressure created from short sale activity is not present.<sup>7</sup> As Corwin points out so eloquently, market information as to prices carries less information if a group of market participants that would have otherwise have sold short is not doing so as they may wish to participate in the offering if they find the price attractive. The uncertainty that the latter issue raises as to the accuracy of price information and the lack of buying pressure will result in steeper discounts to the closing price on pricing day and/or greater unsold allotments at underwriting firms, for which the underwriters will need to be compensated in terms of either underwriting discount or price discount. I believe that neither investors nor issuers are benefited by this likely outcome, but rather that the proposal discards a well thought out balance.

I believe that a far better approach would be for the Commission to provide additional guidance<sup>8</sup> to the investing community regarding the specific means that it believes would result in compliance with existing Rule 105. More particularly, for those investors that have entered into short sales during the restricted period, the Commission should provide additional guidance regarding its expectations of how investors may close out those positions. The nine enforcement cases that have been announced to date provide limited guidance. The creation of a rationally crafted safe harbor would at once ease the Commission staff’s burden and ease the compliance

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<sup>6</sup> Corwin, The Determinants of Underpricing of Seasoned Equity Offers, Journal of Finance 58(5) October 2003 2249 at 2251

<sup>7</sup> In the Release, the Commission requested comment as to whether any seller of securities during the restricted period that are the subject of a secondary offering, whether long or short, should be barred from participation in that offering. If the Commission were to take such an approach, there will be even less informational value carried by prices just prior to the offering, and there will be less buying pressure available.

<sup>8</sup> Securities Exchange Act Release No. 50103 (July 28, 2004) at notes 124-27 and accompanying text provides limited guidance.

concerns of market participants. Safe harbors have been used with similar beneficial effect in areas as diverse as Rule 144 and 10b-18. This too is an area in which a well-crafted safe harbor would be a constructive means to achieve the Commission's regulatory goal. Doing so would not limit the ability of the Enforcement Staff to investigate or the Commission to sanction those engaged in violative conduct, while permitting those investors that contribute to the pricing process to participate lawfully, limited only by the natural economic forces that operate related to short selling.

One possible formulation of language that would accomplish this would be to add to the present rule the following:

- (d) A person shall be deemed not to have covered a short sale with offered securities purchased from an underwriter or broker-dealer participating in the offering if:
- (i) its sales of offered securities are made at times that are at least [a predetermined number of] minutes before or after its purchases of shares in covering transactions; and
  - (ii) none of the offered securities were used by it to close out the borrowings of securities related to the short positions arising from those short sales.

The suggested language is based upon the principle that the closing of the short sales must be done at the risk of the market. This principle is derived from views expressed by Congress and the Commission related to wash sales and other trading activity.<sup>9</sup> The principle that the trading be at the risk of the market is entirely consistent with the notion that natural market forces of supply and demand be the determinants of price. Thus, the Commission would accomplish its stated goal of ensuring that the short sale and covering transactions are not shams.

Unlike the circumstances in the previously announced enforcement cases, there are many trading strategies around secondary offerings that are not only legitimate, but, as I have pointed out, contribute to the pricing mechanism. Simplest is the basic "fundamental view." This strategy includes the development of a long term view of the price movement of the stock in question compared to the price at which a position can be put on. An investor can then decide whether to take a short position or a long position or no position. Separate from fundamental strategies are "event" driven strategies. These are often misunderstood as they encompass a wide variety of trading and investing strategies. The common thread is that an "event" with respect to the company has or is about to occur. The definition of an "event" ranges from an earnings announcement or press release issued by a company to non-economic or financial

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<sup>9</sup> See also NYSE Information Memoranda 86-42 and 2005-102 and the very similar releases issued every December for the years in between related to wash sales and tax swaps (But see information memorandum 2006-84 that clarifies the application of NYSE Rule 78 to tax switching transactions and reaffirms the need for transactions to be at the risk of the market). See also paragraph 25 of the Commission's complaint against Graycort Financial LLC available at <http://www.sec.gov/litigation/complaints/2006/comp19851.pdf>.

matters such as political or general world events and includes mergers, acquisitions and other exceptional corporate events. The common thread is that the investor is working to develop a faster and more accurate view of the market's response to the event. A common feature of events is increased volume. Increased volume reflects more interest in the stock and more divergence in belief as to the direction in which the stock will move long or short term. For example, on the first day of trading after secondary offerings the volume is often a multiple of the previous 10 days average daily volume. See Appendix A. One event driven strategy is to trade around the volatility on the day after pricing of a secondary offering in an attempt to capture the value in anticipating momentum and changes in momentum. To do this, both a short in advance of the offering (the trader hopes he has sold high and can then buy low) and a long position at the offering price (from which one can profit having hopefully bought low to sell high) can be taken and then the trader can trade both positions around the volatility following a secondary offering hoping to profit regardless of whichever side of the market the momentum is indicating while at the same time remaining at risk on both sides of his position.

Quite erroneously, the proposed rule presumes that an investor that sells short in advance of an offering and indicates for an allocation of shares in that offering is engaged in manipulative conduct. To the contrary, as the above description of various trading strategies shows, there are legitimate trading strategies that involve taking both a long and short position in the same security at or near the same time. So long as the short sales are covered at the risk of the market establishing and covering short positions should not be unreasonably restricted.

There are two situations under the present rule that should be clarified. First, if the investor sells short prior to the commencement of the restricted period under Rule 105 (*e.g.*, on the 10th business day prior to the offering) and engages in no other activity in the stock, the investor is permitted to apply stock received in the offering to close out that short sale. However, under a Staff interpretation, if the investor were to sell short even one share<sup>10</sup> during the restricted period, neither that short nor the prior ones may be closed with shares allocated to the investor in the offering. This seems to us to be outside the plain meaning of the rule and contrary to its purpose. I can easily understand a "LIFO" like rule should the Commission choose to adopt one, whereby the last created short should be deemed the one covered with offering shares if a journal transfer of offered shares is made that eliminates any short positions of the investor.<sup>11</sup>

The second situation is similar. Consider a situation in which an investor enters into a short sale prior to the restricted period, then enters into a short sale during the restricted period, and then, prior to the offering buys enough shares to close the latter short sale. Thus, the only remaining short is from prior to the restricted period. I do not believe that the investor should be

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<sup>10</sup> More realistic would be a few hundred shares. The point is that the short during the restricted period is much less than that preceding it or the requested allocation.

<sup>11</sup> Although I can foresee a thoughtful investor carrying pre restricted period shorts at one broker and restricted period shorts at another so that it is clear which shorts were closed with offered shares and which not.

prohibited from closing the pre-restricted period short with offering shares, provided that it has sufficient procedures to demonstrate which short sale was covered with shares purchased on the open market and which short sale was covered with the offered shares

One of the specific points on which the Commission sought comment relates to a long seller that sells shares during the restricted period and then buys shares in the offering, reestablishing its position in whole or part. The market impact of shares being offered for sale would appear to be the same whether a short sale or a long sale. However, a short sale actually has less impact, because it uses up part of the supply of available shares to lend. Long sales do not impact this supply, and thus do not limit future short sales by the investor or others. Accordingly they have the potential for greater impact on market price. To me, the present rule comes as close as can be to striking the right balance between long sellers and short sellers.

Derivatives is a term that is both too broad and too vague to properly be addressed as one all encompassing entity under any rule. The term itself covers a multitude of products, from exchange listed puts and calls, to over-the-counter options tailored to the specific needs of one investor, to total return swaps, either short or long, among many others. The Commission had previously seen the linkages between prices in these markets and the primary market as too attenuated to be a direct influence and too attenuated to permit effective manipulation of the primary market.<sup>12</sup> Because of the large number of different types of derivatives and, with respect to most if not all, the attenuated nature of the price relationship among the derivatives and the underlying stock, I would suggest that a blanket application to derivatives would result in unnecessary and complicated regulation, and the detail involved in a nuanced approach would overwhelm any benefit afforded.

The Commission also asked for comment on three particular types of offerings: PIPES,<sup>13</sup> equity line financings,<sup>14</sup> and rights offerings.<sup>15</sup> In each of these situations, there is the potential that an investor in the offering could benefit by selling short and then taking shares in the offering and covering with those shares when any selling restrictions terminate. However, each of these types of offerings, and PIPES in particular, presents unique issues that would be best addressed with either a rule crafted specifically for those situations or by providing interpretive guidance under existing rules. PIPE issues have been well addressed through Section 5 of the Securities Act of 1933, as amended, and through Section 10(b) of the Exchange Act and Rule

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<sup>12</sup> For example, if the investor enters into the reverse conversion arbitrage, writing a put and buying call (a synthetic long position), while shorting the underlying stock, hoping to make an arbitrage profit from the price difference, the position should not be disaggregated for purpose of Rule 105. This combination of positions should be seen as neutral.

<sup>13</sup> Private investment in public equity. See Release Page 17 (page references are to the pdf format available at the Commission's website).

<sup>14</sup> See Release Page 18.

<sup>15</sup> See Release Page 18

10b-5 thereunder, as well as careful consideration of the issuance by the Commission's Division of Corporation Finance. The same is true of equity line financings and rights offerings.

The deletion from proposed Rule 105 of the exclusion for offerings not on a firm commitment basis would raise several problems for two products that are commonly offered on that basis. First, Exchange Traded Funds are often in continuous distribution on a best efforts basis and new units are created based upon the so-called authorized participant's trading during the day and then determining the best way to eliminate its short position (i.e., if it faced an imbalance in buy side interest and the most effective means to hedge intraday was through the underlying stocks rather than in the ETF market directly). So-called creations occur when an authorized participant delivers in the correct basket of stocks in the sizes required to create at least the minimum number of units permitted under the ETF documents. Without the exclusion from Rule 105 contemplated by current subsection (b), the underwriter's conduct in covering its short with new units would be a violation and clearly an unintended consequence of the removal of the exclusion.

Second, I would also suggest that best efforts offerings, "minimum-maximum" offerings, and offerings for which there is when-issued trading among others would also benefit from the current exclusion. When an offering is not conducted on a fixed price basis, the wrongful act that Rule 105, either in its current form or the proposed form, is meant to prohibit, locking in a profit by virtue of selling high and then buying low in the offering, is not present.

The ETF example among others demonstrates that there are unintended consequences that can arise from any rule no matter how careful the drafting, it would seem prudent to leave in current subsection (c) which gives the Commission the ability to grant exemptions as needed either on its own initiative or on application. Inviting such a process is a much sounder course than forcing a petition to amend a rule.

In conclusion, I believe that the proposed amendments to Rule 105 would have a deleterious effect on the market for secondary offerings by removing from the price discovery process those investors that pay careful attention to issuers and that the result will be over-optimistic pricing that does not reflect the true value of an issuer's securities. Further, I believe the proposal will harm issuers as they will face greater costs in carrying out their secondary offerings. The more prudent approach would be to provide more guidance on how to comply with present Rule 105 and not to take the drastic step proposed, which turns on its head a very fundamental protection of investors under the Federal securities laws

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I hope that you find these comments useful in your consideration of the proposed change. Of course, should you wish to discuss any of these, please call me at 212-309-6303.

Very truly yours,



Robert C. Mendelson

## Appendix I

Symbol	Pricing Date	Pricing Volume	Offer Date + 1	Volume	10 Business Day Prior Volume	ADTV 10 Business Day Prior	First Day after Offering Volume to ADTV 10 Days Prior
CITP	12/21/2005	9,400	12/22/2005	189,600	257,600	25,760	7.360
KMR	12/20/2005	59,600	12/21/2005	389,600	651,100	65,110	5.984
BPUR	12/20/2005	203,800	12/21/2005	1,462,600	1,613,400	161,340	9.065
SUNH	12/20/2005	252,800	12/21/2005	2,008,500	1,260,500	126,050	15.934
HAIN	12/19/2005	678,800	12/20/2005	3,311,800	3,062,300	306,230	10.815
WRES	12/19/2005	507,500	12/20/2005	1,845,100	4,752,500	475,250	3.882
BECN	12/15/2005	700,800	12/16/2005	5,930,600	2,874,200	287,420	20.634
CE	12/14/2005	1,961,700	12/15/2005	1,818,700	9,076,500	907,650	2.004
DRQ	12/14/2005	857,000	12/15/2005	4,232,000	6,250,200	625,020	6.771
GBT5	12/15/2005	22,200	12/16/2005	282,300	322,000	32,200	8.767
PKG	12/15/2005	1,104,800	12/16/2005	6,714,000	9,314,300	931,430	7.208
PCR	12/14/2005	223,700	12/15/2005	1,833,500	1,887,200	188,720	9.715
PBT	12/15/2005	385,900	12/16/2005	3,692,700	1,698,000	169,800	21.747
RJET	12/15/2005	389,100	12/16/2005	3,041,200	2,191,300	219,130	13.879
SCT	12/15/2005	746,400	12/16/2005	9,286,300	2,979,100	297,910	31.171
ALK	12/12/2005	282,500	12/13/2005	809,300	5,935,800	593,580	1.363
AEL	12/14/2005	1,008,400	12/15/2005	5,660,500	7,433,100	743,310	7.615
GSF	12/13/2005	3,287,100	12/14/2005	5,521,600	28,506,700	2,850,670	1.937
HLF	12/13/2005	910,300	12/14/2005	4,175,900	2,809,900	280,990	14.861
OXGN	12/14/2005	484,300	12/15/2005	2,064,400	1,971,900	197,190	10.469
BTUI	12/12/2005	297,200	12/13/2005	933,100	2,207,200	220,720	4.228
CRDN	12/13/2005	1,210,800	12/14/2005	1,925,700	6,828,000	682,800	2.820
LIOX	12/13/2005	699,100	12/14/2005	4,593,900	3,192,800	319,280	14.388
MSSR	12/13/2005	321,500	12/14/2005	2,647,900	920,200	92,020	28.775
STST	12/12/2005	74,600	12/13/2005	523,400	759,800	75,980	6.889
OCR	12/12/2005	2,873,900	12/13/2005	9,200,200	15,802,900	1,580,290	5.822
ARXT	12/8/2005	575,600	12/9/2005	3,333,300	2,012,300	201,230	16.565
CHK	12/8/2005	22,239,300	12/9/2005	28,546,300	132,823,600	13,282,360	2.149
GEL	12/7/2005	6,400	12/8/2005	341,000	67,000	6,700	50.896
UPFC	12/6/2005	67,600	12/7/2005	54,600	365,800	36,580	1.493
UCO	12/8/2005	361,100	12/9/2005	1,048,000	2,860,300	286,030	3.664
WITS	12/8/2005	672,200	12/9/2005	1,905,800	3,342,500	334,250	5.702
CLHB	12/7/2005	271,600	12/8/2005	1,310,700	1,896,300	189,630	6.912
ISE	12/7/2005	1,047,800	12/8/2005	5,662,400	4,696,500	469,650	12.057
NRF	12/7/2005	64,700	12/8/2005	3,240,600	618,300	61,830	52.411
OPWV	12/7/2005	1,872,200	12/8/2005	9,640,900	17,655,400	1,765,540	5.461
TICC	12/7/2005	123,300	12/8/2005	1,269,600	660,900	66,090	19.210
URS	12/6/2005	293,100	12/7/2005	1,440,300	2,202,000	220,200	6.541
AHL	12/6/2005	1,111,400	12/7/2005	4,625,500	6,575,400	657,540	7.035
BEAV	12/6/2005	1,883,600	12/7/2005	6,629,200	6,981,000	698,100	9.496
DNDN	12/6/2005	1,754,500	12/7/2005	8,013,200	8,612,000	861,200	9.305
FR	12/5/2005	205,300	12/6/2005	454,500	1,655,500	165,550	2.745
ICO	12/6/2005	2,499,700	12/7/2005	22,686,600	12,495,000	1,249,500	18.157

LHO	12/5/2005	129,300	12/6/2005	581,300	1,208,600	120,860	4.810
NSR	12/6/2005	829,300	12/7/2005	5,402,900	3,026,500	302,650	17.852
NU	12/6/2005	1,920,900	12/7/2005	10,328,600	11,289,800	1,128,980	9.149
TSY	12/6/2005	455,800	12/7/2005	2,684,600	2,627,900	262,790	10.216
VPHM	12/6/2005	1,902,500	12/7/2005	6,269,500	19,895,100	1,989,510	3.151
XL	12/6/2005	5,054,600	12/7/2005	18,305,500	28,835,200	2,883,520	6.348
EXR	12/5/2005	589,700	12/6/2005	2,874,100	2,342,400	234,240	12.270
KSU	12/5/2005	525,500	12/6/2005	7,104,400	4,164,400	416,440	17.060
VLCM	12/5/2005	586,000	12/6/2005	2,923,700	1,790,500	179,050	16.329
SNH	12/1/2005	257,500	12/2/2005	1,051,200	2,304,600	230,460	4.561
ALSK	12/1/2005	420,700	12/2/2005	3,056,300	1,982,500	198,250	15.416
RE	12/1/2005	662,700	12/2/2005	1,419,500	4,724,500	472,450	3.005
GNW	12/1/2005	18,120,300	12/2/2005	8,446,700	44,835,500	4,483,550	1.884
PTP	11/30/2005	1,898,200	12/1/2005	7,160,200	6,813,600	681,360	10.509
RACK	12/1/2005	352,800	12/2/2005	2,855,600	2,201,000	220,100	12.974
MCGC	11/30/2005	673,300	12/1/2005	2,010,500	3,529,100	352,910	5.697
EPD	11/29/2005	591,100	11/30/2005	673,300	3,157,100	315,710	2.133
APL	11/21/2005	349,800	11/22/2005	1,452,300	750,800	75,080	19.343
POTP	11/21/2005	249,100	11/22/2005	674,900	1,133,000	113,300	5.957
ACAS	11/18/2005	128,000	11/21/2005	249,100	1,020,300	102,030	2.441
BEXP	11/17/2005	830,800	11/18/2005	3,479,300	4,503,800	450,380	7.725
HCC	11/17/2005	465,100	11/18/2005	2,272,300	6,109,000	610,900	3.720
OEH	11/17/2005	376,400	11/18/2005	3,276,600	1,916,900	191,690	17.093
AMR	11/17/2005	9,445,100	11/18/2005	9,464,600	53,601,700	5,360,170	1.766
AXS	11/15/2005	612,200	11/16/2005	958,800	9,147,000	914,700	1.048
CCRT	11/17/2005	539,100	11/18/2005	2,806,700	4,215,700	421,570	6.658
GSX	11/17/2005	1,263,900	11/18/2005	3,838,400	9,818,300	981,830	3.909
LCUT	11/17/2005	153,100	11/18/2005	1,679,300	741,500	74,150	22.647
ONXX	11/17/2005	705,700	11/18/2005	2,566,800	8,457,600	845,760	3.035
SNX	11/16/2005	170,200	11/17/2005	1,248,500	931,200	93,120	13.407
SHO	11/17/2005	199,100	11/18/2005	412,400	3,272,700	327,270	1.260
ETFC	11/16/2005	12,009,700	11/17/2005	32,309,700	48,082,400	4,808,240	6.720
EEP	11/16/2005	745,600	11/17/2005	1,693,800	1,510,300	151,030	11.215
EPG	11/15/2005	61,200	11/16/2005	642,100	580,100	58,010	11.069
XTEX	11/15/2005	140,500	11/16/2005	1,738,700	261,700	26,170	66.439
DIGE	11/15/2005	648,000	11/16/2005	1,938,800	2,824,200	282,420	6.865
HLND	11/15/2005	9,000	11/16/2005	212,800	148,500	14,850	14.330
OHI	11/15/2005	539,300	11/16/2005	1,785,900	2,095,000	209,500	8.525
UCBI	11/15/2005	68,700	11/16/2005	495,200	474,000	47,400	10.447
WPS	11/15/2005	670,200	11/16/2005	2,278,400	2,624,400	262,440	8.682
CBG	11/8/2005	2,956,800	11/9/2005	3,966,600	22,179,300	2,217,930	1.788
EQIX	11/9/2005	951,700	11/10/2005	3,816,500	3,015,400	301,540	12.657
CMCO	11/7/2005	753,600	11/8/2005	2,215,600	2,659,400	265,940	8.331
CG	11/7/2005	168,200	11/8/2005	2,865,600	3,364,800	336,480	8.516
ZUMZ	11/8/2005	472,000	11/9/2005	2,122,600	2,241,000	224,100	9.472
JBLU	11/4/2005	2,049,800	11/7/2005	5,915,100	44,173,600	4,417,360	1.339
MGLN	11/3/2005	196,700	11/4/2005	1,910,300	3,369,700	336,970	5.669
PGIC	11/3/2005	464,500	11/4/2005	1,462,000	8,412,600	841,260	1.738
SNMX	11/3/2005	812,900	11/4/2005	1,252,000	3,406,000	340,600	3.676
MYGN	11/3/2005	645,500	11/4/2005	3,011,100	4,374,900	437,490	6.883
KMP	11/2/2005	251,800	11/3/2005	1,194,500	2,353,300	235,330	5.076
DRRX	11/1/2005	600,500	11/2/2005	4,958,600	4,137,500	413,750	11.985

AKAM	10/31/2005	3,796,200	11/1/2005	6,269,900	24,755,800	2,475,580	2.533
IPCR	10/31/2005	2,090,700	11/1/2005	8,331,300	9,577,000	957,700	8.699
BRNC	10/27/2005	249,900	10/28/2005	1,107,500	987,900	98,790	11.211
EGLE	10/27/2005	441,100	10/28/2005	2,448,800	2,131,400	213,140	11.489
PRE	10/27/2005	520,000	10/28/2005	685,400	5,194,000	519,400	1.320
<b>Totals</b>				<b>398,453,600</b>		<b>78,536,030</b>	<b>5.074</b>
Std Dev							10.276
Min							1.048
Max							66.439
Median							7.670

Please note that in preparing this data, I reviewed the prospectus to determine when the pricing date actually occurred. Standard data compilations do not always have the correct date. I used my best judgment in determining the true pricing date and time. Any corrections would be greatly appreciated.