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February 13, 2007

Re: **File No. S7-30-06**
Short Selling in Connection with a Public Offering

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Dear Ms. Morris:

We are submitting this letter in response to the solicitation by the Securities and Exchange Commission (the "Commission") of comments on the proposed amendment to Rule 105 of Regulation M concerning short selling in connection with a public offering.

While we generally support the proposal, there are a few minor modifications that we believe would preserve the rule's benefits while limiting some of its unintended adverse consequences.

A. Limit commencement of restricted period to later of public announcement of the offering or five business days before pricing

Capital markets transactions are executed more quickly than ever before, in large part as a result of changes in the Commission's rules, such as Securities Offering Reform, that have facilitated issuers' timely access to the capital markets. Today, most equity offerings are launched and priced in less than five business days, with "overnight" transactions being a significantly increasing portion of the market. By commencing the restricted period at the later of five business days before pricing and the initial filing of the registration statement regardless of whether an offering has been publicly announced at that time, the rule unnecessarily limits the potential universe of buyers for an offering. Trading techniques have gotten more sophisticated and there are numerous strategies that involve short sales which have neither manipulative intent nor effect. Often times these strategies are employed by investors that are interested in a particular issuer and accordingly would otherwise be likely potential purchasers in an offering. By excluding potential investors that obviously acted without the prohibited intent (because they effected the short sale without knowledge of the proposed offering), the proposed rule would interfere with price discovery and potentially adversely

impact the pricing of the offering. By definition, short sales made prior to the public announcement of an offering are not the manipulative transactions that the policy concerns behind Rule 105 seek to prevent. Accordingly, we would recommend that the restricted period not commence until the later of public announcement of the offering or five business days before pricing.

If the Commission is not inclined to limit the commencement of the restricted period as recommended above, then we would recommend, in the alternative, that the Commission provide an exception to allow those that cover restricted period short sales prior to pricing to participate in the offering. As noted above, many legitimate trading strategies, which contribute to efficient price discovery, involve short sales. Excluding potential investors that affirmatively demonstrate their lack of manipulative intent by covering the short position would only limit demand for the offering and could thereby adversely affect its pricing.

B. Deleting the phrase “from an underwriter or broker or dealer participating in the offering” introduces unnecessary ambiguity

Prohibiting purchases “in the offering” as opposed to “from an underwriter or broker or dealer participating in the offering”, introduces unnecessary ambiguity into Rule 105 – *i.e.*, when will a security be deemed to be purchased “in the offering”? For example, could the purchase of shares through an automated order execution system on an exchange constitute “in the offering,” even though an investor would likely have no way of knowing whether shares in an offering were being distributed through an automated order execution system?

In addition, although clearly not intended, a literal reading of the proposed words would prevent an investment bank that had effected a short sale during the restricted period from participating in a proposed offering as an underwriter or dealer since it would literally be purchasing in the offering.

C. If Rule 105 will apply to offerings not conducted on a firm commitment basis, then relief should be granted for ETFs, ETNs and similar securities

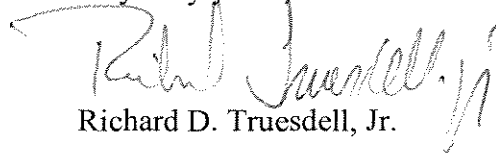
Exchange traded funds (“ETFs”) are designed to replicate the holdings or correspond to the performance and yield of a reference securities index by purchasing either the component securities underlying the index or a highly correlated subset of the securities underlying the index. Since ETFs are typically not distributed on a firm commitment basis, existing Rule 105 does not apply to their distributions by virtue of Rule 105(b) which excepts offerings not conducted on a firm commitment basis from the prohibition of Rule 105.

The proposal to eliminate the exception for offerings not conducted on a firm commitment basis would cause Rule 105 to apply to ETFs. Application of Rule 105 to ETFs and similar securities would unnecessarily hinder broker-dealers in their creation and redemption activities and in their day-to-day business

of buying and selling ETF shares, potentially undermining the beneficial market effect of ETF share trading by broker-dealers. It is unnecessary to apply Rule 105 to ETFs, exchange traded notes ("ETNs") and other similar securities since they do not present the potential for abuse that the rule is designed to prevent. ETFs trade based on the net asset value, or NAV, of their portfolio, with any material discrepancy quickly being arbitrated away. Transactions in an ETF's shares (creations and redemptions or purchases and sales in the secondary market) will not affect its NAV per share. While relief was sought and granted under Rules 101 and 102 for transactions in ETFs, relief was not sought under Rule 105 since it was inapplicable. If Rule 105 will apply to offerings not conducted on a firm commitment basis, then similar relief should be granted for ETFs and similar securities.

We appreciate the opportunity to comment on the proposed rule. We would be happy to discuss our comments or any questions the Commission or its staff may have with respect thereto. Please do not hesitate to contact the undersigned at 212-450-4674 if you would like to discuss these matters.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Richard D. Truesdell, Jr.", written in dark ink. The signature is fluid and somewhat stylized, with a prominent initial "R".

Richard D. Truesdell, Jr.