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1 December 2010

Short-Term Borrowings Disclosure
(Release Nos. 33-9143; 34-62932)
Commission File No. S7-22-10

Dear Ms. Murphy,

Ernst & Young LLP is pleased to comment on the Securities and Exchange Commission's (the "Commission" or the "SEC") proposed rule *Short-Term Borrowings Disclosure* (the "Proposed Rule" or "Proposal"). The Proposed Rule would require quantitative and qualitative disclosures about short-term borrowings in Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A"), including intra-period short-term borrowing amounts.

MD&A requirements and interpretations

The Proposal discusses the existing requirements for disclosure about short-term borrowings, and concludes, "companies that do not provide Guide 3 disclosure are not subject to any line item requirements for the reporting of specific data regarding short-term borrowing amounts or information about intra-period borrowing levels. "[1] Instead, MD&A for annual periods must discuss various aspects of the registrant's liquidity and capital resources, and MD&A for interim periods must discuss material changes in financial condition.

Over the past decade, the overall quality of the MD&A discussions of liquidity and capital resources generally has improved substantially. Much of this improvement is attributable to the Commission's interpretive guidance. In January 2002, the SEC issued FR-61, *Commission Statement about Management's Discussion and Analysis of Financial Condition and Results of Operation*s, which focused on MD&A disclosure about, among other things, liquidity and capital resources and contingent commercial commitments. In January 2003, the SEC issued FR-67, *Disclosure in Management's Discussion and Analysis about Off-Balance Sheet Arrangements and Aggregate Contractual*

[1] Industry Guide 3, *Statistical Disclosure by Bank Holding Companies,* requires bank holding companies to disclose on an annual basis the average, maximum month-end and period-end amounts of short-term borrowings.

Obligations, as required by Section 401(a) of the Sarbanes-Oxley Act, mandating that a separately captioned subsection of MD&A disclose material off-balance sheet arrangements (as defined). FR-67 also amended MD&A to require a tabular presentation of aggregate contractual obligations, which FR-61 had recommended. In December 2003, the SEC issued FR-72, *Commission Guidance Regarding Management's Discussion and Analysis of Financial Condition and Results of Operations*, which provided interpretive guidance concerning the preparation, format and content of MD&A, including the discussion of liquidity and capital resources.

In September 2010, the SEC issued, FR-83, *Commission Guidance on Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis*, which focuses on, among other things, MD&A disclosure about liquidity "in order to facilitate understanding by investors of the liquidity and funding risks facing the registrant." For example, FR-83 states, "if the registrant's financial statements do not adequately convey the registrant's financing arrangements during the period, or the impact of those arrangements on liquidity, because of a known trend, demand, commitment, event or uncertainty, additional narrative disclosure should be considered and may be required to enable an understanding of the amounts depicted in the financial statements."

FR-83 also states that the SEC staff "has noted that there may be confusion on the part of registrants about how to address disclosure of certain repurchase agreements that are accounted for as sales, as well as other types of short-term financings that are not otherwise fully captured in period-end balance sheets." In response, FR-83 provides the following guidance,

> In evaluating whether disclosure in MD&A may be required in connection with a repurchase transaction, securities lending transaction, or any other transaction involving the transfer of financial assets with an obligation to repurchase financial assets, that has been accounted for as a sale under applicable accounting standards, the registrant should consider whether the transaction is reasonably likely to result in the use of a material amount of cash or other liquid assets. Disclosure may be required in the discussion of liquidity and capital resources, particularly where the registrant does not otherwise include such information in its off-balance sheet arrangements or its contractual obligations table.

The guidance in FR-83 should help to resolve confusion regarding, and further improve the quality of, MD&A disclosures about liquidity. We agree with the SEC's observations in FR-83: "The economic environment is not static. Circumstances and risks change and, as a result, disclosure about those circumstances and risks must also evolve."

Proposed short-term borrowings disclosures in MD&A

In addition to its interpretive guidance in FR-83, the SEC has proposed MD&A disclosures about short-term borrowings to improve the presentation of information about funding and liquidity risk. The proposed disclosures would increase the level of transparency to investors regarding the use of available funding sources. The Proposal observes that "many failures in the financial crisis arose due to liquidity constraints."

The Proposal states, "since liquidity and funding risks can change rapidly over the course of a year, we are proposing to require the information for both annual and interim periods." While we agree that more frequent reporting of the utilization of short-term borrowing arrangements would be an improvement over existing requirements, some registrants still will experience liquidity events due to unexpected changes in market conditions. As the Proposal observes:

> Recent events have shown that [short-term financing] arrangements can be impacted, sometimes severely and rapidly, by illiquidity in the markets as a whole. When market liquidity is low, short-term borrowings present increased risks: that financing rates will increase or terms will become unfavorable, that it will be more costly or impossible to roll over short-term borrowings, or for financial institutions, that demand depositors will withdraw funds.

Further, quantitative disclosures about a registrant's historical utilization of short-term funding sources might not be indicative of its future need for various forms of short-term financing. Accordingly, a registrant's qualitative disclosures in MD&A about its prospective financing plans and needs will be the more important element of the disclosures necessary to inform investors about potential funding and liquidity risks.

Moreover, timely disclosure using Form 8-K to inform investors about material transactions and events that affect short-term borrowing arrangements and their utilization, whether expected or unexpected, will continue to be an important source of information for investors. Timely reporting of such developments necessarily requires a registrant to have effective disclosure controls and procedures and often involves the subjective assessment as to whether a material short-term borrowing "arises other than in the ordinary course of business." Given the importance of Form 8-K within the SEC's integrated disclosure framework to timely report material developments affecting liquidity, we support the Commission's proposed alignment of the definition of "short-term borrowings" for purposes of both MD&A and Form 8-K Items 2.03 and 2.04.

Financial accounting considerations

The SEC's proposal to require quantitative disclosures about short-term borrowing amounts and levels in MD&A suggests that the current financial statement disclosure framework regarding short-term borrowings might be deficient. Accordingly, accounting standards setters should be encouraged to consider whether to incorporate disclosures about intra-period short-term borrowing amounts into annual and interim financial statements. The Financial Accounting Standards Board (FASB) has an active Disclosure Framework project with the objectives of (1) establishing an overarching framework to make financial statement disclosures more effective and coordinated and (2) seeking ways to better integrate information provided in financial statements, MD&A, and other parts of a reporting entity's financial reporting package. This project would be expected to assess the potential integration into the financial statements of any quantitative MD&A disclosures about short-term borrowing amounts and levels. In the shorter term, the FASB's project on Accounting for Financial Instruments could address financial statement disclosures about short-term borrowings.

If accounting standards setting activities result in the integration into the financial statements of quantitative disclosures about short-term borrowing amounts and levels, or other MD&A disclosure requirements, we would encourage the SEC to undertake timely action to eliminate any duplication within its MD&A rules. Further, once a final rule regarding the MD&A disclosure of short-term borrowings becomes effective, we would encourage the SEC to instruct its staff to review disclosure practices in order to assess whether the final rule is eliciting the intended information and whether that information is helpful to investors. This review also should evaluate the costs of implementing and maintaining the related systems and controls necessary to comply with the requirements and assess whether the benefits of the disclosures exceed the costs. To these ends, the SEC might consider adopting a formal "sunset" provision (e.g., five years) that would require formal action to renew or modify the new disclosure requirements before they would otherwise expire.

Financial metrics

The Proposal requests comment on whether all types of registrants should be required to provide leverage ratio disclosure and discussion. We agree with the Proposal's observation:

> [O]utside the banking industry, a variety of metrics are used to evaluate a company's debt levels and capital adequacy. There does not appear to be a "one-size-fits all" leverage ratio that is used by companies or investors.

Instead, different financial statement users, based on their particular needs and perspectives and considering various industry practices, apply different methodologies to evaluate a company's capitalization and leverage profile. The Proposal acknowledges the inconsistency of current practice, which could diminish the significance to investors of current disclosures regarding leverage.

In our view, the ability of the variety of users to assess and compare the leverage profiles of multiple companies should be enhanced as more companies begin to report under the SEC's interactive data mandate. Accordingly, we see little value in the SEC mandating disclosure of a leverage ratio based on a specific calculation methodology.

Instead, we recommend that the SEC continue to encourage companies to disclose in MD&A the financial metric(s) (actual and target) used for capital management purposes. This would be consistent with the objective of MD&A to allow investors to see the business through the "eyes of management." To this end, the SEC took the appropriate approach in FR-83 with respect to considerations in the disclosure of a capital or leverage ratio in SEC filings, including:

- Any ratio or measure included in an SEC filing should be accompanied by a clear explanation of the calculation methodology[2]

- If the financial measure differs from other measures commonly used in the registrant's industry, a discussion of those differences, or presentation of those other measures, might be advisable

[2] The explanation should discuss the treatment of any unusual, infrequent or non-recurring inputs that are otherwise adjusted so that the ratio is calculated differently from comparable measures.

- The company should include disclosure stating why the financial measure is useful to understanding its financial condition[3]

The considerations set forth in FR-83 appear sufficient to inform investors about the basis of any leverage ratio disclosed by a company, without endorsing the use of a specific calculation methodology or discouraging the disclosure of others.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,

Ernst & Young LLP

[3] FR-72 provides additional disclosure considerations if the ratio is being presented in connection with disclosures about a debt instrument and related covenants.