



November 29, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-22-10 Short-Term Borrowings Disclosure

Dear Ms. Murphy:

We appreciate the opportunity to respond to the Securities and Exchange Commission's (SEC or "Commission") proposed rule on *Short-Term Borrowings Disclosure* (the "Proposed Rule").

We support the Commission's objectives to promote high quality, transparent disclosure about registrants' liquidity and capital resources. When considered together with the guidance on applying Item 303 of Regulation S-K in the recently issued Interpretive Release, *Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis (MD&A)*, we believe the Proposed Rule will support the Commission's goal of improving the discussion of liquidity and capital resources in MD&A.

Our response focuses on aspects of the Proposed Rule that we believe warrant further clarification. In addition, we understand that many registrants may incur significant costs and face operational complexities in providing the information required by the Proposed Rule, particularly registrants that are not subject, directly or indirectly, to Industry Guide 3, *Statistical Disclosure By Bank Holding Companies*, ("Guide 3") disclosures. Such registrants may include foreign private issuers, smaller reporting entities, and other entities that would meet the proposed definition of a financial company, but do not meet the definition of a bank holding company or have material amounts of lending and deposit activities. Therefore, our response suggests alternatives that may be considered if the Commission determines that a less complex process would be acceptable for all or certain groups of registrants, and that the effective date recognize these operational complexities.

GENERAL MD&A DISCLOSURES

We encourage the Commission to provide additional guidance and clarity on the definition of short-term borrowings subject to the proposed disclosures. Based on the discussion in the Background and Summary section of the Proposed Rule, the Commission's concerns about liquidity disclosures appear to relate to a broader group of financing arrangements than those meeting the historical definition of the term "short-term borrowings." We note the following items where clarification may be useful in determining whether the proposed definition would capture them:

- Contractual short term obligations presented as long-term (non-current) liabilities, in accordance with ASC 470-10-45, if a company intends to, and has the ability to, refinance the obligation on a long-term basis.
- Financing arrangements, such as lines of credit and term loan facilities, that a registrant reflects as non-current, where frequent borrowings and repayments are made for operational reasons, but where the registrant is not contractually obligated to repay the borrowings within one year. Such arrangements may be used to provide short-term funds similar to traditional short-term borrowing arrangements.
- For registrants that do not present a classified balance sheet, how the definition should be applied.
- Items to be included within the proposed category "any other short-term borrowings reflected on the registrant's balance sheet." This category is based upon the balance sheet line item "other short-term borrowings" pursuant to Regulation S-X, Article 9-03.13(3). For entities that do not follow Article 9, it may be unclear what amounts reflected on the balance sheet fall within this category, as the Proposed Rule does not provide a specific definition.
- Whether the proposed category "federal funds purchased and securities sold under agreements to repurchase" is intended to capture similar economic transactions, such as securities lending, or whether they should be captured in a different category or at all. Securities lending transactions are not typically shown on the balance sheet as short-term borrowings, and have not typically been included in Guide 3 disclosures.

In the Proposed Rule, the Commission also seeks comment regarding the scope of the proposed disclosures. Guide 3 includes a provision allowing bank holding companies to disclose average balance information on a weekly or monthly basis, when collecting daily information "would involve unwarranted or undue burden or expense ... provided such averages are representative of the operations of the registrant." Given the cost and effort for some registrants to comply with the proposed requirements, including but not limited to those with a limited amount of short-term borrowings, we suggest that a practicability provision, similar to the provision now included in Guide 3, be provided to all registrants. As an alternative, we suggest the Commission consider accepting qualitative disclosures regarding a registrant's policies for managing short-term

borrowings, for example, the approved limits or ranges for each category of short-term borrowings, and any breaches of, or changes in, those policies during the period, rather than quantitative disclosures.

REPORTING PERIODS

Domestic Registrants

We have several technical comments regarding the reporting periods that need to be presented by a registrant and suggest the Commission address these matters when issuing the final rule.

Forms 10-Q

Proposed instruction 8 to Paragraph 303(b) states:

Notwithstanding anything to the contrary in this Item 303, a registrant that is not a smaller reporting company must include the disclosure required pursuant to (a)(6) of this Item for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X . . . , and for the registrant's fourth fiscal quarter in the case of an annual report filed on Form 10-K . . . , and must provide an updated discussion and analysis of the information presented. . . . For purposes of interim period disclosures . . . the term "reported period" used in paragraph (a)(6) of this Item means the most recent interim period presented or, in the case of an annual report filed on Form 10-K (referenced in §249.310), the registrant's fourth fiscal quarter.

We have two comments about the clarity of this instruction:

- For a filing other than a Form 10-K, the instruction calls for disclosure "for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X" (emphasis added). The financial statement requirements for Form 10-Q are located in Article 10 of Regulation S-X (not Article 3), therefore it is unclear from the instruction whether the disclosure is required in a Form 10-Q.
- The instruction calls for disclosure for the "most recent interim period presented." A Form 10-Q presents financial statements for two interim periods that both end on the end of the most recent fiscal quarter (the most recent quarter and the year-to-date period). It is unclear from this instruction whether the interim period for which the short-term borrowings disclosure is required is the most recent fiscal quarter, the year-to-date period, or both.

Registration Statements

We have three comments about the clarity of proposed instruction 8 quoted above as it applies to registration statements:

- The proposed instruction is clear that a registration statement must include the interim period short-term borrowings disclosure required by Item 303(a)(6) of Regulation S-K, however it is not clear to us whether the disclosure would be required for (a) the current year-to-date period or (b) each quarter of the current year. The proposed instruction calls for disclosure “for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X.” The only interim financial statements required to be included by Article 3 of Regulation S-X cover the year-to-date period, and that is also by definition the “most recent interim period presented,” so the “reported period” seems to be the year-to-date period. However, the references in the release to “quarterly” information and question 20 asking whether the Commission should require year-to-date information in addition to quarterly information make us uncertain whether the proposed instruction 8 reads as intended.
- If the Commission’s intent is for short-term borrowings disclosure to be provided for each of the quarters within the current year-to-date period, we suggest the Commission consider whether this is appropriate in initial registration statements. Repeat issuers subject to Item 302(a) of Regulation S-K provide quarterly financial data in their registration statements, and all repeat issuers file quarterly reports on Form 10-Q. The disclosures in those reports would provide context for evaluating quarterly short-term borrowings information in the registration statements. In contrast, initial registration statements require only year-to-date interim financial statements and do not provide investors with such context. Therefore, perhaps providing only year-to-date short-term borrowings information would be appropriate in initial registration statements.
- The proposed instruction is unclear regarding what interim period short-term borrowings disclosure, if any, is required in a registration statement that does not contain interim financial statements. The proposed instruction suggests that a Form S-1 that is not required to include interim periods and includes, rather than incorporates by reference, the prior year Form 10-K does not need to include the short-term borrowings disclosure for the fourth quarter of the prior year that was previously presented in the most recent Form 10-K. If that is the Commission’s intent, we believe it would be helpful to provide commentary in the adopting release to clarify this. If not, we suggest the Commission revise the proposed instruction 8 to make this clear.

Foreign Private Issuers

Based on the commentary in the release, the Commission seems to envision a foreign private issuer providing interim short-term borrowings disclosures in a registration statement if the registration statement includes interim financial statements. Pages 39-40 of the release state:

Foreign private issuers preparing registration statements with audited full-year financial statements would be required to include short-term borrowings disclosure for the three most recent full fiscal year periods and quarterly information for any subsequent interim periods included in the registration statement in accordance with the requirements of the relevant registration statement form.

Thus, unless a foreign private issuer ... files a Securities Act registration statement that must include interim period financial statements and related MD&A-equivalent disclosure, [footnote reference omitted] it would not be required to update its disclosure under proposed Item 5.H of Form 20-F more than annually.

In contrast, proposed Item 5.H.5 of Form 20-F states:

Information required by this Item 5.H shall be presented for each of the three most recent fiscal years.

Therefore, we have two comments about proposed Item 5.H.5:

- While it appears the Proposed Rule envisions a foreign private issuer providing interim short-term borrowings disclosure in a registration statement if the registration statement includes interim financial statements, proposed Item 5.H.5 does not communicate this. If interim short-term borrowings information is to be provided, we suggest the Commission revise Item 5.H.5 to make this clear. In making this clarification, we recommend that the Commission ensure that the fact that no interim short-term borrowings disclosure is required in annual reports remains clear.
- If foreign private issuers are to provide interim short-term borrowings disclosure in a registration statement that includes interim financial statements, we recommend that the period or periods for which such information should be provided be made clear. Since foreign private issuers generally update their financial statements in registration statements every six months (not every quarter), the reference to “quarterly information for any subsequent interim periods included in the registration statement” on page 39 of the Proposed Rule should be revised.

TRANSITION ISSUES

We encourage the Commission to include an effective date that recognizes the likely operational complexities associated with providing these disclosures for the first time and provide clear guidance on which periodic filing should include the disclosure for the first time. If the final rule will be effective for any period other than a registrant's first quarterly period in its fiscal year, we recommend that the Commission clarify that the disclosures would not be required for the previous quarters in that fiscal year. Further, we recommend that the Commission provide clarity on the transition guidance with respect to annual periods included in an initial registration statement filing. For example, would the transition guidance for purposes of the annual reporting requirement only require the short-term borrowings information for the most recent fiscal year at time of initial filing, or would the transition disclosure be based on the annual financial statements included at the time of initial filing and at the time of effectiveness?

We are available to discuss our comments and to answer any questions that the SEC or its staff may have. Please contact Rob Enticott (973-236-4903) or Timothy Corrigan (973-236-5302) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

cc: SEC

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