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November 22, 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**
Release No. 33-9143
Proposed Rule: Short-Term Borrowings Disclosure

Dear Ms. Murphy:

This letter is the response of BDO USA, LLP to your request for comments regarding the proposal referred to above.

We support the Commission's efforts to enhance the quality and transparency of registrants' disclosures regarding their liquidity and capital resources. In that regard, we believe the guidance the Commission provided in its September interpretive release, *Commission Guidance on the Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis*, should help accomplish the goal of improving the discussion of liquidity and capital resources so investors can better understand the liquidity and funding risks facing registrants. Our comments on the proposal address two matters:

1. Overall approach - We suggest taking an approach that is less prescriptive and more objectives-based.
2. Operational issues - If the Commission proceeds with an approach that is consistent with the one proposed, we have suggestions for improving the clarity and operability of the rules.

Overall Approach

In question 1 of its requests for comment, the Commission raises the issue of whether the overall approach proposed is the right one. The Commission asks for comments regarding two approaches: (1) requiring specific line item disclosure in MD&A as proposed and (2) retaining existing requirements. We believe that answering this question requires consideration of both the information needs of users and practical issues. One important practical issue is the cost of providing the information. Another is the extent to which one approach is likely to result in better compliance than another.



We believe that users and registrants are best positioned to provide feedback on these issues, and we urge the Commission to place the most weight on the feedback they provide.¹

With that in mind, our sense is that:

- For many companies, the disclosures called for by the proposed rules, particularly the tabular information required by proposed Item 303(a)(6)(i) of Regulation S-K, will not provide users with material incremental information about the ability of the company to obtain the financing it needs to conduct its business and the costs of that financing.
- For some companies, the disclosures called for by the proposed rules, particularly the tabular information required by proposed Item 303(a)(6)(i), will be costly to prepare.
- While Item 303 of Regulation S-K together with the Commission's interpretive guidance should elicit the necessary disclosure, expanding Item 303 to specifically address short-term borrowings is likely to result in better compliance with Item 303 than doing nothing. Improving compliance with Item 303 would result in a corresponding improvement in the quality of information provided to users.

Therefore, it seems to us that an approach that may strike a better balance between improving compliance and not unnecessarily burdening a large number of companies lies somewhere in between the two approaches referred to in question 1. We suggest that a better approach might be to amend Item 303 to specifically address short-term borrowings but to do so in a less prescriptive and more objectives-based manner. Such an approach would:

- Be consistent with the general objectives-based approach the Commission uses to elicit disclosure in MD&A;
- Avoid the need for companies to prepare and users to read disclosure that is not material to an understanding of a company's liquidity; and
- Allow companies to use judgment and tailor their disclosures so they focus on the information they view as most important.

Specifically, we suggest the Commission consider adding an instruction to the Instructions to paragraph 303(a) of Regulation S-K that would (a) state a disclosure objective with respect to short-term borrowings, (b) provide a list of related topics a registrant should consider discussing and (c) make it clear that the disclosure is only required to the extent necessary to an understanding of the ability of the company to obtain the financing it needs to conduct its business and the costs of that financing. We think the language in proposed Item 303(a)(6)(ii) of Regulation S-K and the examples of important trends and uncertainties relating to liquidity listed in the September interpretive release provide most of the ingredients for such an instruction.

¹ We also urge the Commission to weigh the comments of users who own securities more heavily than those of other users, since the owners of a company ultimately pay the cost of providing whatever information is required.



The following example illustrates this approach and might serve as a useful starting point for crafting such an instruction:

Illustrative Example

Short-term borrowings - To the extent necessary to an understanding of the registrant's short-term borrowings, provide information to enable investors to understand the following:

- a. The amount of short-term financing the registrant needs to conduct its business;
- b. The historical sources of that financing;
- c. The costs of that financing;
- d. How the above may vary during the reporting period; and
- e. The factors that could affect its ability to continue to obtain that financing in the future.

To meet the above disclosure objective, consider providing the following:

- Tabular data showing historical borrowings and interest rates thereon for periods and categories deemed relevant
- A general description of the short-term borrowing arrangements included in each category (including any key metrics or other factors that could reduce or impair the company's ability to borrow under any of such arrangements and whether there are any collateral posting arrangements) and the business purpose to the registrant of such short-term borrowings

Also, consider discussing the following:

- The importance to the registrant of material categories of short-term borrowings in respect of its liquidity, capital resources, market-risk support, credit-risk support or other benefits
- The reasons for any material differences between the level of short-term borrowings during the period and period-end borrowings
- Difficulties accessing the debt markets
- Reliance on commercial paper or other short-term financing arrangements
- Maturity mismatches between borrowing sources and the assets funded by those sources
- Changes in terms requested by counterparties
- Changes in the valuation of collateral
- Counterparty risk
- Obligations to repurchase assets that are reasonably likely to result in the use of a material amount of cash or other liquid assets
- Cash management and risk management policies relevant to an assessment of financial condition



Operational Issues

If the Commission proceeds with an approach that is consistent with the one proposed, we have the suggestions set forth below for improving the clarity and operability of the rules.

Definition of Short-Term Borrowings

We suggest that the Commission clarify the disclosures required in the following two situations:

- When a registrant does not present a classified balance sheet.
- When a registrant borrows on a short-term basis under a revolving line of credit arrangement that has repayment terms permitting the borrowings to be classified as long-term. While the borrowings are not required to be repaid within one year, registrants with such arrangements might borrow and repay cash in the same manner as registrants with traditional short-term borrowing arrangements. In this situation, the ability to obtain financing in the future may be less of a concern since there is a commitment in place. However, information communicating how close a registrant came to fully utilizing the facility may help users evaluate whether the facility is adequate to meet the registrant's future needs. Therefore, a discussion of intraperiod borrowings under such arrangements may be warranted.

Otherwise, we think the definition of "short-term borrowings" is sufficiently clear. We note that the Commission asked in question 2 of its requests for comment whether the definition should refer to "short-term obligations" as defined in FASB ASC 210-10-20. We do not think this would be appropriate, because it appears to us that this would require disclosure for all current liabilities. We don't think it would be useful to require disclosure for liabilities arising from operations (e.g., accounts payable).

Categories of Short-Term Borrowings

Proposed Item 303(a)(6) would require disclosure for each category of short-term borrowings specified in Item 303(a)(6)(iii). We suggest that it would reduce the cost of complying with the rule and might enable registrants to present tabular data that more meaningfully supports their qualitative discussion if registrants were permitted to choose categories that are most meaningful to them and consistent with the way they manage their finances. We suggest that the rule instead describe these categories as guides.

Disclosure Thresholds

Proposed Item 303(a)(6) does not contain any quantitative and/or qualitative thresholds. We suggest that the final rule contain thresholds so that information that is not material does not need to be presented in the tabular data.



Computing the Amounts to be Presented

Proposed Item 303(a)(6) would require prescribed daily or monthly average and maximum amounts. We suggest that it would reduce the cost of complying with the rule and might enable users to gain greater insight into how a registrant manages its liquidity if registrants were permitted to instead (1) compute the amounts presented in the tables using the records they use for management purposes and (2) disclose the manner in which the amounts were prepared.

Some financial companies may not keep records in a manner that facilitates determining averages and maximums based on daily amounts. Some companies close their books every four or five weeks. Their internal reporting periods exceed the "a month" limit stated in proposed Instruction 2 to Paragraph 303(a)(6). Allowing these companies to compute the amounts to be presented based on the information they use to run their businesses seems consistent with an accommodation in Guide 3, which allows 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." This approach would also reduce the need for a delayed effective date. And most important, we expect that it would provide users with a better understanding of how a registrant manages its liquidity.

We also note that if the Commission tries this approach and it fails to achieve the desired objective, the Commission can always change the rule in the future to require a more prescriptive approach.

Periods to be Presented

We believe registrants will have difficulty in determining the periods for which short-term borrowings information needs to be presented. We recommend that the Commission more clearly specify the requirements in the final rules to address the concerns outlined below.

Domestic Registrants - Form 10-Qs

Based on the commentary in the Release, we understand that in a Form 10-Q a company that is not a smaller reporting company is required to provide the short-term borrowings disclosure required by Item 303(a)(6) of Regulation S-K only for the most recent quarter of the current year. For example, in a third quarter Form 10-Q, the disclosure would be required only for the third quarter of the current year. While current and prior year year-to-date financial statements and discussions of operating results are presented and prior year third quarter financial statements are presented and covered in the discussion of the current year third quarter operating results, no year-to-date disclosure is required, and no prior year disclosure is required.

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 the following concerns 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), so it's not clear how this instruction tells a reader that short-term borrowings 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 end on the end of the most recent fiscal quarter (the most recent quarter and the year-to-date period), so it's not clear how this instruction tells a reader that the interim period for which the short-term borrowings disclosure is required is the most recent fiscal quarter.

Domestic Registrants - Registration Statements

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

- First, while it's clear that a registration statement must include the interim period short-term borrowings disclosure required by Item 303(a)(6) of Regulation S-K, it is not clear to us whether the disclosure is required to be provided for (a) the current year year-to-date period or (b) each quarter of the current year. In other words, if a Form S-1 presents annual financial statements for the years ended December 31, 2009, 2010 and 2011 and year-to-date financial statements for the nine months ended September 30, 2011 and 2012, is the short-term borrowings disclosure required to be provided for (a) the nine-month period ended September 30, 2012 or (b) the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012? Instruction 8 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." In the example above, the only interim financial statements required to be included by Article 3 of Regulation S-X cover nine-month periods and the "most recent interim period presented" is a nine-month period, so the "reported period" seems to be a nine-month period. Therefore, Instruction 8 seems to require the short-term borrowings disclosure for only the nine-month period ended September 30, 2012. 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 Instruction reads as intended. Therefore, if the Commission’s intent is for short-term borrowings disclosure to be provided for each of the quarters within the current year year-to-date period, we suggest the Commission revise Instruction 8 to make this clear.

- Second, if the Commission’s intent is for short-term borrowings disclosure to be provided for each of the quarters within the current year 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. These other disclosures would provide context for evaluating quarterly short-term borrowings information in their 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 more appropriate in initial registration statements.
- Third, there may be confusion regarding what interim period short-term borrowings disclosure, if any, is required in a registration statement that does not contain interim financial statements. For example, a registrant with a December year-end files a Form S-1 in April 2013, shortly after it files its Form 10-K for the year ended December 31, 2012. The Form S-1 does not incorporate by reference the 2012 Form 10-K. It presents annual financial statements for the years ended December 31, 2010, 2011 and 2012 and no interim financial statements. Is that registrant required to present in the Form S-1 the short-term borrowings disclosure for the fourth quarter of 2012 that was presented in the 2012 Form 10-K? Since the filing is not a Form 10-K and no interim financial statements are required by Article 3 of Regulation S-X, the rule suggests that the disclosure for the fourth quarter of 2012 can be omitted. If that is the Commission’s intent, then we believe it would be helpful to provide commentary in the adopting release to clarify this. If not, then we suggest the Commission revise 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 concerns about the clarity of proposed Item 5.H.5:

- First, while it appears the proposed rule envisions a foreign private issuer providing interim short-term borrowings disclosures 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 disclosures are required in annual reports filed by foreign private issuers remains clear.
- Second, if foreign private issuers are to provide interim short-term borrowings disclosures in a registration statement if the registration statement includes interim financial statements, the period or periods for which such information is to be provided should be made clear. For example, if a foreign private issuer with a December year-end files a Form F-1 during the fourth quarter of 2012, it would be required to present annual financial statements for the years ended December 31, 2009, 2010 and 2011 and year-to-date financial statements for the six months ended June 30, 2011 and 2012. 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 is not clear. Would the foreign private issuer in this example need to provide interim disclosure for (a) the quarters ended March 31, 2012 and June 30, 2012 or (b) the six months ended June 30, 2012?

Transition Issues

While we believe that users and registrants are best positioned to provide feedback on the effective date and transition, the proposed approach of allowing companies not subject to Guide 3 to phase in the disclosures prospectively strikes us as appropriate, because some companies may not have the information needed to comply if retrospective application is required.

We have the following suggestions for implementing this approach in a clear and operational manner.

- Effective date - Defer the effective date for a sufficient time to allow registrants to make necessary changes in their internal reporting systems and disclosure controls and procedures.



- Periodic reporting - Clarify whether registrants will first provide the disclosures in a quarterly or annual report. If registrants will first provide the disclosures in a quarterly report, clarify whether the disclosure will first be required in the first quarterly report within a fiscal year. If the disclosures will first be required in a quarterly report that is not the first quarterly report within a fiscal year, clarify what disclosures, if any, will be required with respect to prior quarters within that fiscal year. We suggest that the Commission first require the disclosures in the first quarterly report within a fiscal year (e.g., by requiring disclosure beginning with the first quarterly report for fiscal years beginning after June 15, 2011). This approach results in fully prospective application and allows reporting to start sooner than if reporting is first required in an annual report (e.g., by requiring disclosure beginning with the first annual report for fiscal years beginning after June 15, 2011).
- Registration statements filed by repeat issuers - Clarify whether registration statements filed by repeat issuers during the phase-in period will simply require whatever disclosure has already been provided to comply with Exchange Act reporting requirements or something more. We suggest that the disclosure already provided to comply with Exchange Act reporting requirements is sufficient.
- Initial registration statements - Transition for issuers filing initial registration statements needs to be considered separately, because this will always be an issue for these companies, even after current registrants have transitioned to full compliance with the rules. The questions here are whether quarterly data is needed, as discussed above, and what annual data is needed. We suggest that the Commission use an approach for future initial registration statements that is broadly consistent with the phase-in approach it adopts for companies that are currently issuers.

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We appreciate this opportunity to express our views to the Commission. We would be pleased to answer any questions the Commission or its staff might have about our comments. Please contact Wendy Hambleton, National Director - SEC Practice, at (312) 616-4657 or via electronic mail at whambleton@bdo.com, or Wayne Kolins, National Director - Assurance Practice, at (212) 885-8595 or via electronic email at wkolins@bdo.com.

Very truly yours,

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