PRICEWATERHOUSECOOPERS

February 1, 2005

Mr. Jonathan G. Katz, Secretary
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: File Number S7-38-04, Securities Offering Reform

Dear Mr. Katz:

We appreciate the opportunity to comment on the Commission's proposed rule *Securities Offering Reform*. We fully support the Commission's efforts to enhance and modernize the registration, communications, and offering processes under the Securities Act of 1933, particularly in light of the significant revisions to the current and periodic reporting systems under the Securities Exchange Act of 1934 which have been effected in recent years.

We agree with the direction of the proposed rule, recognizing the need to provide registrants with efficient access to the capital markets, and at the same time provide investors with timely, accurate information that is useful for decision making purposes.

We commend the Commission on its cooperation with the Committee of European Securities Regulators and its participation in the International Organization of Securities Commissions. The impact on international convergence was not addressed in the proposed rule; however, we believe that this warrants consideration by the Commission. The European Commission set out in 1999 to integrate the European capital markets, and has made tremendous progress, including the issuance of the Prospectus Directive and the Transparency Directive. We believe that the convergence of market disclosure practices on a global basis is the long-term answer, and support the Commission's efforts to achieve that goal.

In the pages that follow, we respectfully submit for the Commission's consideration our views on some of the questions raised in the proposed rule — primarily questions about accounting and auditing matters, as well as questions regarding other areas in which we have significant experience, such as the SEC staff's comment letter process.

We would be pleased to discuss our comments and to answer any questions that the SEC staff or the Commission may have. Please do not hesitate to contact Jay P. Hartig (973-236-7248) or Virginia S. Benson (973-236-5422) regarding our submission.

Sincerely,

PricewaterhouseCoopers LLP

III. Communications Proposals

D. Proposed Rules

1. Permitted Continuation of Ongoing Communications During an Offering

b. Regularly Released Factual Business—Non-Reporting Issuers

- ***As a condition for this safe harbor or one for initial public offerings, should we require the issuer to file projections or other forward-looking information as part of the registration statement? Should the projections be required to follow Item 10 of Regulation S-K or S-B as applicable? Should projections be required to be accompanied by an accountant's report on the projections or forecasts?***

We do not have a basis for commenting on whether the Commission should extend the safe-harbor in proposed Rule 169 to forward-looking statements made by non-reporting issuers. However, if the Commission were to provide such a safe harbor, we recommend that it not be conditioned on a requirement that the non-reporting issuer file projections or forecasts as part of the registration statement.

Unlike historical financial statements, which reflect the results of past transactions and events, projections and other forward-looking information are based on predictions of the future. Projections and other forward-looking information are inherently uncertain, highly susceptible to changes in facts and circumstances, and could be potentially misleading to investors. We believe that conditioning a safe harbor on the filing of projections or other forward-looking information could result in issuers desirous of safe harbor treatment creating forward-looking information that lacks quality.

If the Commission were to provide a safe harbor conditioned on the filing of projections or forecasts in the registration statement, we recommend that the Commission not require that the projections or forecasts be accompanied by an accountant's report. Although we acknowledge that the AICPA's Audit and Accounting Guide: *Guide for Prospective Financial Information* provides a framework by which accountants may report on a projection or forecast, the inherent limitations of a projection or forecast and the fundamental uncertainties associated with attesting to a prediction of the future would result in significant delays and added costs in the offering process.

III. Communications Proposals

D. Proposed Rules

3. Relaxation of Restrictions on Written Offering Related Communications

b. Permissible Use of Free Writing Prospectuses

iii. Permitted Use of a Free Writing Prospectus After the Filing of a Registration Statement Under Proposed Rule 433

(A) Conditions to Permitted Use of a Free Writing Prospectus

(2) Ineligible Issuers

- ***Would disqualification from our proposals on the basis of a "going concern" opinion from the issuer's independent auditor cause undue pressure to be placed on auditors not to issue those opinions? Should we replace that disqualification with one dependent on whether the issuer had: 1) net losses or negative cash flows from operations for two or more of the past three annual fiscal periods; or 2) a deficit in net worth at the date of the most recent balance sheet? Should an issuer's disclosure of a material weakness in its internal controls over financial reporting make an issuer ineligible for purposes of the proposals?***

Issuers experience significant, negative consequences after disclosing the type of liquidity issues that would ordinarily result in the independent accountant issuing a "going concern" opinion. Accordingly, when discharging their reporting responsibilities under Statement on Auditing Standards No. 59, *The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern* (SAS 59), independent accountants are already subject to significant pressure to not issue such an opinion. We believe that becoming ineligible for "well-known seasoned issuer" status would not result in a significant additional consequence to issuers. Therefore, such ineligibility would not put significant incremental pressure on the independent accountant with regard to issuing a "going concern" opinion. However, even if it were to bring significant additional pressure, we are confident that independent accountants will continue to discharge their professional responsibilities in accordance with professional standards irrespective of that pressure.

Moreover, we support the Commission's proposed rule, which would render an issuer ineligible for "well-known seasoned issuer" status if it receives a "going concern" opinion from its independent accountant for the most recent fiscal year. The receipt of a "going concern" opinion from an issuer's independent accountants is a significant event to the issuer. If an issuer is ineligible to qualify as a "well-known seasoned issuer" due to a "going concern" opinion, this would cause a short delay of the issuer's access to the capital markets. However, we believe that this additional time could serve to protect investors by (1) providing the SEC staff an opportunity to select the issuer's filings for review before effectiveness and, (2) allowing the gatekeepers associated with that issuer (e.g., the independent accountants, legal counsel, underwriters, and audit committee members) to perform their due diligence procedures. As noted above, we believe that becoming ineligible for "well-known seasoned issuer" status would not result in a significant additional consequence to the issuer because a "going concern" opinion does not render an issuer ineligible to use a short-form registration statement (e.g., Form S-3). In our view, the potential benefit to investors of additional reviews by the SEC staff and additional procedures performed by gatekeepers would outweigh the disadvantage to the issuer resulting from a short delay and inability to automatically go effective.

Although the proposed rule treats all material weaknesses identically, we believe all material weaknesses should not be treated the same. Accordingly, the presence of one or more material weaknesses should not, in our view, disqualify an issuer from "well-known seasoned issuer" status. Moreover, the disclosures made by issuers and their independent accountants regarding material weaknesses will provide the capital markets with the information they need to evaluate the consequences of a material weakness.

V. Securities Act Registration Proposals

B. Procedural Proposals

1. Procedures Changes Regarding Shelf Offerings

b. Information in a Prospectus

iii. Date of Inclusion of Prospectus Supplements in Registration Statements and New Effective Dates of Registration Statements

- ***In light of the new effective date for liability purposes that would be imposed by proposed Rule 430B, will there be questions regarding the necessity of providing an auditor's consent or the letter regarding unaudited financial information (see Item 601(b)(15) of Regulation S-K) for interim period takedowns for prospectus supplements that did not contain disclosure for which a consent was required? If so, what would be the appropriate means to address this possible situation? Would a new effective date for each takedown for liability purposes have any effect on liability for incorporated Exchange Act reports that have not been modified or superseded?***

We understand that under the proposed rule, the filing of a prospectus supplement will establish a new effective date for liability purposes only, but that it will generally not require the filing of additional consents of experts[1]. However, because the proposal would establish a new date for accountants' liability under Section 11 of the Securities Act[2], we recommend that the Commission include a requirement in the final rule that issuers file a currently dated accountants' consent.

We believe that all participants associated with an offering that could incur liability in connection with a particular filing should have a mechanism for ensuring that they are satisfied with the materials with which they are being associated as of the effective date of those materials. If the participants are not satisfied with the materials, they then have the ability to require changes or the opportunity to disassociate themselves from the particular offering. Issuers and underwriters have that opportunity in their preparation of the materials and their execution of the underwriting agreement. Accountants and other experts should be given a similar opportunity. The consent process would provide a similar opportunity for accountants and other experts.

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1. See page 67429: "For example, a prospectus supplement filed in connection with one or more takedowns of securities that did not include other disclosure for which the consent of an expert would be required pursuant to Securities Act Section 7 and Securities Act Rule 436 would not require consents to be filed or be considered the filing of a new registration statement."

2. Section 11(a)(4) of the Securities Act of 1933 states:

    a. In case any part of the registration statement…contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, any person acquiring such security…may…sue…

        4. every accountant…who has with his consent been named as having prepared or certified any part of the registration statement.

We also recommend that the Commission provide a mechanism whereby accountants and other experts may consider their association with the offering materials for which a new effective date (and therefore a new liability "as of" date) is created. We further recommend that the Commission provide guidance for issuers and their auditors on how the "new effective date" concept will impact the registrant's "fundamental change[3]" undertaking in Item 512(a)(1)(ii) of Regulation S-K (Item 512).

Under current practice, the annual audited financial statements that would be incorporated by reference in a new or amended registration statement (for which a consent would be required pursuant to Rule 436) may be different from those that are incorporated by reference in an already effective registration statement to which a prospectus supplement relates (and for which there has been no new effective date). This difference arises as a result of the Section 11 liability "effective date" concept and the Item 512 "fundamental change" undertakings. We believe that the proposed rule creates a conflict between these two principles.

Consider, for example, a calendar year-end issuer that disposed of a material component of its business in April 2005. Assume that the issuer is first required to report the component as a discontinued operation in accordance with Statement of Financial Accounting Standards No. 144, *Accounting for the Impairment or Disposal of Long-Lived Assets* (FAS 144), in its quarterly report on Form 10-Q for the quarter ended June 30, 2005.

Under U.S. generally accepted accounting principles, the issuer would be required to present the disposed component as a discontinued operation in its financial statements for the three- and six-month periods ended June 30, 2005 and would be required to reclassify its financial statements for the three- and six-month periods ended June 30, 2004 (included for comparative purposes in the June 2005 Form 10-Q) to present the component as a discontinued operation as well. The mere filing of the June 2005 Form 10-Q would not, in itself, obligate the issuer to reissue its annual audited financial statements included in its 2004 Form 10-K to reflect the discontinued operation.

However, if the issuer were to file a new or amended registration statement, or proxy or information statement anytime after the date that the issuer had filed its June 30, 2005 Form 10-Q, it would then be required to restate its annual audited financial statements (e.g., included in its 2004 Form 10-K) to reflect the disposed component as a discontinued operation for all periods presented. Similarly, the auditor would be required to reissue its audit report (likely dual dated for the discontinued operation) and sign a

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3. See U.S. Securities and Exchange Commission Division of Corporation Finance *Accounting Disclosure Rules And Practices, An Overview* Training Material (2000 Edition), Topic Two: Other Financial Statements Required which states, "It is the responsibility of management to determine what constitutes a fundamental change and it is based generally on whether additional information is necessary for an investor to make an informed investment decision."

currently dated consent.[4] The analysis would be the same regardless of whether the annual audited financial statements are included or incorporated by reference in the new or amended registration statement or proxy or information statement.

If, however, instead of filing a new or amended registration statement or proxy or information statement, the issuer were to takedown securities off of an effective Rule 415 shelf registration statement by means of a prospectus supplement, the issuer would not be required to revise the annual audited financial statements incorporated by reference in the base prospectus or the prospectus supplement (and the auditor would not be required to reissue its report or provide a currently dated consent[5]) unless the discontinued operation represented a "fundamental change." If the discontinued operation were considered to be a fundamental change, the issuer would be required to file a post-effective amendment[6] to update the registration statement pursuant to its undertakings in Item 512 thereby creating a new effective date (in which case the auditor would need to update its subsequent events procedures to the new effective date[7] and would be required to issue a currently dated consent).

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4. See U.S. Securities and Exchange Commission Division of Corporation Finance *Accounting Disclosure Rules And Practices, An Overview* Training Material (2000 Edition), Appendix C: Effects of Subsequent Events on Financial Statements Required in Filings:

> If financial statements as of a date on or after the date management adopts a qualifying plan to discontinue a business segment (the measurement date) are required in a registration statement or proxy, restatement of all periods prior to the measurement date in accordance with APB 30 is required. This guidance is applicable even where the filing incorporates by reference annual audited financial statements issued prior to the measurement date. The auditor's consent to incorporation of those financial statements in a registration statement or proxy is deemed a reissuance that requires consideration of the effects of subsequent events. Moreover, the financial statements prepared by management and included in the filing are required to comply with GAAP at the date of effectiveness or mailing, necessitating restatement pursuant to APB 30.

[Note APB 30 was superseded by FAS 144 after these materials were prepared. The same considerations, however, apply under FAS 144].

5. See paragraph 11 of AU 9711 which states, in part,: "When a shelf registration statement is updated by a supplemental prospectus (or "sticker"), the effective date of the registration statement is considered to be unchanged since the supplemental prospectus does not constitute an amendment to the registration statement, and, consequently, no posteffective amendment has been filed. Accordingly, an accountant has no responsibility to update his performance of subsequent events procedures through the date of the supplemental prospectus or sticker…"

6. Item 512 provides that if the registration statement is on Form S-3, S-8, or F-3, the information required to be included in a post-effective amendment may, instead, be contained in periodic reports filed by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement. However, with respect to the annual financial statements, the issuer would still be obliged to update its financial statements and the accountant would still be required to provide a currently dated consent and update its subsequent events procedures (see paragraph .08 of AU 9711).

7. Paragraph .03 of AU 9711 states: "Section 711, *Filings Under Federal Securities Statutes*, paragraph .05, states:

> Because a registration statement under the Securities Act of 1933 speaks as of its effective date, the independent accountant whose report is included in such a registration statement has a statutory responsibility that is determined in the light of the circumstances on that date." The independent accountant's statutory responsibility regarding information covered by his report and included in a registration statement is specified in Section 11 of the 1933 Act. Section 11(b)(3)(B) states that the accountant will not be held liable if he can sustain a burden of proof that "he had, after reasonable investigation, reasonable ground to believe and did

We believe that the proposed rule may create a conflict with current practice. Using the hypothetical fact pattern described above, we believe that the professional auditing standards would obligate the auditor to perform a subsequent events review as of the new effective date in accordance with AU 711. In addition, it is our view that:

- The auditing standards would preclude the auditor from issuing an unqualified opinion on the financial statements unless the financial statements were updated to retroactively reflect the discontinued operation.
- The extension of the effective date would require the issuer to consider whether its financial statements have been presented in accordance with U.S. generally accepted accounting principles as of the new effective date, which would similarly obligate the issuer in the above example to retroactively restate its annual financial statements to reflect the discontinued operation before the issuer files the prospectus supplement.
- This would be required even if the discontinued operation did not constitute a fundamental change as that term is used in the Item 512 undertakings.

Although we have discussed these concepts using a discontinued operations example, there are a number of other commonly occurring situations that result in the need to retroactively restate previously issued financial statements (for reasons other than the correction of an error) including:

- Changes in business segment presentation
- Adoption of new accounting principles that require retroactive application
- Reorganizations of entities under common control
- Changes in reporting entity
- Stock splits[8]

> believe, at the time such part of the registration statement became effective, that the statements therein were true and that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading." To sustain the burden of proof that he has made a "reasonable investigation" as of the effective date, the accountant performs subsequent events procedures (as described in section 711.10 and .11) to a date as close to the effective date of the registration statement as is reasonable and practicable in the circumstances.

8. Notwithstanding the requirement under U.S. generally accepted accounting principles to retroactively restate historical financial statements to reflect a stock split that became effective before the effective date of a registration statement, the SEC staff has provided an administrative accommodation to registrants and their auditors. See U.S. Securities and Exchange Commission Division of Corporation Finance *Accounting Disclosure Rules And Practices, An Overview* Training Material (2000 Edition), Appendix C: Effects of Subsequent Events on Financial Statements Required in Filings which states:

> Stock splits also require retroactive presentation. Ordinarily, the staff would not require restatement of previously filed financial statements that are incorporated by reference into a registration statement or proxy for reasons solely attributable to a stock split. Instead, the registration statement or proxy may include selected financial data which includes relevant per share information for all periods, with the stock split prominently disclosed.

- Changes from the cost method of accounting for an investment to the equity/consolidation method in connection with an increase in the level of ownership

Our experience indicates that when taking down securities off of a shelf, registrants, underwriters, and the respective securities counsel rarely conclude that the change to the financial statements required to present the annual audited financial statements in accordance with U.S. generally accepted accounting principles as of the takedown date would constitute a "fundamental change." Thus, registrants generally do not update their annual audited financial statements to comply with U.S. generally accepted accounting principles as if they were being reissued on the date of the prospectus supplement. Therefore, the operation of the proposed rule will have a significant impact on current practice and will almost certainly delay an issuer's ability to access the capital markets.

Additionally, as discussed above, AU 9711.11 will likely need to be amended by the PCAOB in order to consider the "new effective date" concept.

V. Securities Act Registration Proposals

B. Procedural Proposals

2. Automatic Shelf Registration for Well-Known Seasoned Issuers

b. Automatic Shelf Registration Mechanics

ii. Information in a Registration Statement

(F.) Automatic Effectiveness

- ***Should we condition automatic effectiveness on resolution of staff comments? Why or why not?***

The intent of the proposed rule is to eliminate delays in the offering process and to provide issuers with timely access to the capital markets, particularly issuers that meet the quantitative and other objective criteria specified for a "well-known seasoned issuer." Accordingly, automatic effectiveness of a shelf registration statement for a "well-known seasoned issuer" should not be conditioned upon the resolution of staff comments.

In our experience, the parties involved in a shelf registration statement, including the issuer and the various gatekeepers, are committed to the resolution of significant outstanding comments before effectiveness. Further, Section 11 of the Securities Act of 1933 imposes liability for material misstatements and omissions in a registration statement. Thus, we believe that sufficient safeguards are in place to provide an incentive for timely resolution of staff comments. Regardless of whether the staff issues a rule that permits automatic effectiveness, we believe that the parties involved will continue to evaluate unresolved comments before filing a shelf registration statement.

With respect to the staff's goal of ensuring more timely resolution of its comments in situations where a registrant has not timely resolved comments, we believe the proposed disclosure requirement regarding comments that remain outstanding after a significant amount of time may provide an incentive for registrants to ensure timely resolution. The need to resolve staff comments in a timely fashion is important not only in connection with an offering of securities, but also for the protection of those investors that use the reporting stream under the Securities Exchange Act of 1934 (the "Exchange Act") for other purposes (such as trading in the secondary markets).

VII. Additional Exchange Act Disclosure Proposals
A. Risk Factor Disclosure

- ***Should we require risk factor disclosure about specific matters that are in addition to those referred to in Item 503 of Regulation S-K? If so, what are they?***
- ***Are there ways, in addition to those we have used in Item 503 and our plain English rules and our guidance on MD&A to ensure that issuers include meaningful, rather than boilerplate, risk factor disclosure?***
- ***Should we extend risk factor disclosure requirements to Forms 10-KSB and 10-SB?***

We support the Commission's proposal to require risk factor disclosures in Exchange Act registration statements and periodic reports. We concur that such disclosures should follow the guidance contained in Item 503(c) of Regulation S-K and should be written in "plain English." We believe that disclosure of the risks facing a registrant are important to all registrants, including small business issuers, and that such disclosure should be included in registration statements on Form 10-SB, annual reports on Form 10-KSB, and quarterly updates on Form 10-QSB.

We have noticed that an increasing number of companies are already including disclosures of risk factors in periodic reports. Item 303 of Regulation S-K, as well as other staff guidance, requires a discussion in Management's Discussion and Analysis (MD&A) of the risk and uncertainties facing a company. Since the MD&A section of a filing provides registrants with an opportunity to explain and analyze the business and operations of the company from the company's perspective, any discussion of risk factors as outlined in proposed Item 1A could necessitate further embellishment in MD&A. We believe that such disclosure will make reported information more transparent to investors and will enable investors to be better attuned to the specific risks facing the registrant. However, rather than mandate specific disclosures, the Commission should provide interpretive guidance regarding (1) the objectives of the disclosures and (2) the nature of risk factor disclosures. Following this approach will enable registrants to customize the discussion to address the relevant risk factors that it believes are necessary for investors and the markets to understand. To facilitate meaningful risk factor disclosures, the Commission should provide guidance similar to that included in several MD&A releases.

VII. Additional Exchange Act Disclosure Proposals
B. Disclosure of Unresolved Staff Comments

- ***Is 180 days the right timeframe to resolve outstanding staff comments? Is it too short? Is it too long?***

- ***Should the 180 days be calculated from the date of the initial written comment letter from the staff, regardless of comments received after that date that relate to or arise from the original comments or issuer responses to the original comments?***

We support the Commission's proposed rule regarding the disclosure of unresolved staff comments, although we believe that certain enhancements in the SEC staff's review process could improve the comment resolution process (see below).

We believe that the proposed timeframe of 180 days provides for an appropriate amount of time for resolution of staff comments. This time period will give most registrants sufficient time to resolve the vast majority of outstanding issues that the staff commented on during its review process. Comments that cannot be resolved within 180 days are usually indicative of a significant issue which should be disclosed.

As a result of the SEC staff's announcement (on June 24, 2004) that it will release comment letters and corresponding registrants' response letters related to filings that the staff has reviewed, the comment letter process will become more transparent. The staff's new policy will result in the release of all correspondence when the review of a particular filing is complete. At some point, therefore, all staff comments and registrant responses will be publicly available (subject, of course, to successful requests for confidential treatment under Commission Rule 83), thus reducing the impact of the proposed disclosure requirement.

We also noted the SEC staff's statement (at the 2004 AICPA National Conference on Current SEC and PCAOB Developments) that it will begin to formally advise registrants when the staff has completed its review of a particular filing. We believe that this type of change is a necessary condition to registrants understanding when the comment process is complete for purposes of determining their disclosure obligations under the proposed rule.

In situations where the staff has remaining comments on some, but not all, issues raised during a review, we recommend that the staff notify registrants when it has no further comments on specific issues. This would be particularly helpful when the staff requests supplemental information on specific issues and when subsequent rounds of comments are issued. A registrant may be uncertain about how to proceed with future filings when it is unsure of whether the staff will have further comments on a particular issue or might disagree with the registrant's position.

With respect to the appropriate trigger date, we believe that the period of 180 days should begin on the date of the staff's initial comment letter *that specifically raises the issue in question*. This date may be different from the date of the *initial* comment letter, since the staff's iterative review process may result in the staff issuing a comment about a new issue that was not addressed in its initial letter.

- ***Should the staff have to address issuer responses to outstanding written comments on Exchange Act reports within a particular timeframe after the response has been submitted by the issuer on EDGAR? If yes, what timeframe?***

We believe that the staff should not be required to respond to an issuer's response letter in a defined time period. However, we recommend that the staff consider establishing a general timeframe in which an issuer could expect that a review of a periodic report or an issuer response letter would be completed. The staff's current policy with respect to registration statements and proxy statements is to notify an issuer when the staff has determined that it will review the particular filing. The staff has historically completed its initial review procedures for registration statements and proxy statements within 30 days of filing and has historically responded to the issuer's response letters (either with another comment letter or by indicating that the staff has no further comments) within approximately 10 business days. (We are unaware of any equivalent designated timeframe for staff reviews of periodic reports.) We recognize that it may be difficult for the staff to commit to a specified number of days for completing its review of Exchange Act reports, but we believe that a similar 30 day timeframe for completing the initial review and a 10 business day turnaround timeframe for issuer response letters is reasonable.

Furthermore, we recommend that the staff advise an issuer when the issuer's periodic reports have been selected for staff review. Specifically, we recommend that the staff provide the issuer with a written notification that the staff has selected the issuer's periodic report(s) for review and what date the issuer can expect to receive the staff's comments. If an issuer is aware that receipt of a comment letter is imminent (particularly a "well-known seasoned issuer"), it would then have the opportunity to delay the filing of a registration statement or a subsequent period report. Although the review of periodic reports may not have the same time sensitivity as a registration statement or a proxy statement, we believe that issuers should be provided a general idea of when they can expect the staff to complete its review.

- ***Should we require the proposed disclosure of unresolved comments to also appear in Form 10-KSB reports filed by small business issuers?***
- ***Should we require the proposed disclosure of unresolved comments to also appear in Form 40-F?***
- ***Should we require disclosure of unresolved staff comments in quarterly reports as well?***

If the staff decides to adopt this disclosure policy, we recommend that *all* registrants, including small business issuers filing on Form 10-KSB and foreign private issuers filing on Form 40-F, be required to disclose comments that remain outstanding after 180 days. We also recommend that registrants disclose comments outstanding for more than 180 days in Form 10-Q or Form 10-QSB. We do not believe that the disclosure requirement will be burdensome for smaller issuers or foreign private issuers but we do believe that investors in the securities of those issuers would be better protected if they were informed of significant outstanding issues.

Although we support the disclosure of such comments in periodic reports, we recommend that the Commission provide further guidance for when the status of unresolved comments changes after a periodic report is filed (i.e., the 180 day timeframe is met or significant changes have developed regarding comments previously disclosed).

Consider, for example, a situation where a registrant has unresolved staff comments that have not been outstanding for more than 180 days at the time of filing the most recent periodic report and therefore have not been disclosed. If subsequent to the filing of the periodic report, the 180 day timeframe is met, and the registrant decides to take down securities off of a shelf registration statement, the proposed rule should provide guidance regarding whether this represents a "fundamental change" and the resulting disclosure requirements.

- ***Should we require issuers to list each outstanding comment in its disclosure by repeating the comment verbatim as issued by the staff? Should we permit issuers to paraphrase or summarize the outstanding staff comments?***

We recommend that issuers not be required to list each outstanding comment. Rather, issuers should be permitted to paraphrase or summarize outstanding staff comments. The staff's comment letter process is often iterative, including several rounds of comments and corresponding registrants' responses. In addition, some comments involve extensive verbal communication with the staff, which may not be captured in the written record. Listing each outstanding comment verbatim could cause unnecessary confusion to investors and others unless a registrant is permitted to provide some context and clarification of the issue. As with all disclosures in a public document, the primary responsibility should reside with the issuer.

Because some comment letters represent the results of numerous rounds of staff comments and registrant responses, significant time may elapse between the initial comment letter and the final resolution of the comments. We recommend that the registrant should be permitted to describe the timing of the comment letter process in its Exchange Act reports so that a reader can better understand the circumstances surrounding why certain comments remain unresolved after 180 days.

- ***Are there more appropriate means to provide incentives to timely resolve staff comments?***

We do not view this process as one primarily intended to provide an incentive to timely resolve staff comments. Our experience is that registrants and their professional advisors are keenly interested in promptly resolving staff comments. Rather, we view this process as one of providing investors with better information about significant unresolved matters about which they should be informed. We believe that the Commission's current authority in the Division of Enforcement provides ample incentive to timely resolve staff comments.

- ***Should issuers have to disclose comments that have been resolved and will be addressed in future Exchange Act reports?***

We recommend that issuers not be required to separately disclose comments that have been resolved through the issuer's agreement to comply in future filings. Presumably, when the staff and an issuer agree to resolve a comment in future filings, they have also agreed that the circumstances that gave rise to the comment are not significant enough to warrant an amendment to the previously filed document. If all parties have agreed that the condition that gave rise to the comment were not significant enough to require an amendment, it would be unnecessary to make separate disclosure of the resolved comment in an Exchange Act report. As noted above, the public release of comment letters announced by the staff in June 2004 will provide disclosure of all comment letters and corresponding registrant responses, once the comment letter process is complete.

We do, however, believe that it is important for the staff and issuers to reach a shared understanding of what it means to reflect a comment in future filings. While we acknowledge that the determination of when a disclosure should be made in future filings is facts and circumstances driven, perhaps general guidance could be provided by the staff.

- ***Should we require disclosure of all unresolved comments without regard to a materiality assessment by the issuer?***
- ***Should the staff have a role in determining which unresolved comments should be disclosed?***

We do not believe that disclosure of comments that remain outstanding after 180 days should be subject to a materiality assessment. Generally, comments that remain outstanding for more than 180 days after issuance would be sufficiently significant to make disclosure beneficial.