

THE SEC PROPOSES SECURITIES OFFERING REFORM

DECEMBER 10, 2004

The Securities and Exchange Commission has recently proposed significant modifications to the registration, communications and offering processes under the Securities Act of 1933 (the "Proposals").¹ The proposed reforms are primarily designed to:

- liberalize the flow of information from issuers to investors before and during offering periods;
- streamline the Securities Act registration process, especially for certain larger reporting issuers referred to as "well-known seasoned issuers" or "WKSIs";
- implement a new "access equals delivery" model for final prospectuses based upon electronic availability instead of physical delivery; and
- alter, in certain respects, the liability framework under the Securities Act by expressly premising certain disclosure liability for material misstatements or omissions solely on the information conveyed to an investor at the time the investor becomes committed to purchase securities, whether orally or in writing.

Unlike the so-called "Aircraft Carrier" reform initiatives proposed by the SEC in 1998, which contemplated the establishment of a wholly new registration process, the Proposals are incremental in approach and build on prior reform initiatives and the existing framework. The benefits of this approach are several, including the retention of rules, regulations and forms familiar to market participants. However, this approach has resulted in a highly technical set of proposals, as embodied in the Proposing Release.

The Proposals, which address only registered offerings (and not Rule 144A or Regulation S offerings), are open for public comment until January 31, 2005. We believe it is likely that the SEC will take definitive regulatory action based on the Proposals in the second quarter of 2005 and that reforms closely resembling the Proposals will be adopted in this timeframe.

This memorandum comprises a summary highlighting the significant aspects of the Proposals, followed by a more detailed and technical discussion of the Proposals.

¹ See *SEC Release Nos. 33-8501; 34-50624; IC-26649; International Series Release No. 1282 (November 3, 2004)* (the "Proposing Release").

SUMMARY

COMMUNICATIONS-RELATED PROPOSALS

The Proposals, if adopted, would liberalize existing restrictions under the Securities Act that limit communications around the time of a registered offering. The Proposals would institute the following reforms:

- establish a “bright line” test whereby issuers could communicate more than 30 days prior to filing a registration statement without risk of violating “gun-jumping” restrictions under the Securities Act;²
- create new safe-harbors that would permit a reporting issuer to continue to publish or disseminate regularly released factual business and forward-looking information and allow a non-reporting issuer to continue to publish or disseminate factual business information that had been regularly released to persons other than in their capacity as investors or potential investors;
- permit well-known seasoned issuers to engage in oral and written offers before a registration statement is filed;
- expand the existing Rule 134 Securities Act communications safe harbor that is currently available for “tombstone” advertisements and other limited public notices by permitting these communications to include more information about the issuer and the registered offering;
- permit, subject to specified conditions, communications constituting written offers, called “free writing prospectuses” in the Proposals, to be made in connection with a registered offering in addition to the statutory prospectus; and
- liberalize the existing safe harbors permitting publication of research around the time of a registered offering.

The Proposals would, however, narrow the exception under Regulation FD applicable to disclosures made in connection with a registered securities offering.

The communications-related Proposals would generally not apply to communications regarding business combination transactions or offerings made by registered investment companies.

² Such communications could not reference a securities offering, and the exemption would not be available for any communication that, although in technical compliance, is part of a plan or scheme to evade the requirements of Section 5 of the Securities Act.

SECURITIES ACT REGISTRATION PROCESS-RELATED PROPOSALS

The Proposals would streamline the current Securities Act registration process in certain significant respects. Among other things, the Proposals would allow eligible well-known seasoned issuers to file “automatic shelf registration statements” that would become effective immediately upon filing. Such registration statements would not be subject to review and comment by the SEC staff prior to effectiveness. A well-known seasoned issuer would not be required to specify in the registration statement the amount of securities to be offered, the allocation of the registered securities between securities to be offered on a primary and secondary basis or the plan of distribution and would be permitted to pay the requisite SEC filing fees on a “pay-as-you-go” basis. In effect, this new approach to registration would permit a qualifying well-known seasoned issuer to make unlimited sales off of its shelf registration.

The Proposals also would:

- clarify and expand the information that may be omitted from the base prospectus included in a shelf registration statement;
- modify the manner by which information may be included in a shelf registration statement and establish additional dates – closer to the time of a takedown – upon which a shelf registration statement is deemed, for liability purposes, to become effective;
- remove current limitations on the amount of certain primary securities that may be registered on a shelf registration statement;
- eliminate “convenience shelf” complications by permitting immediate takedowns from a shelf registration statement without the need to file a prospectus supplement as part of the registration statement prior to effectiveness;
- eliminate existing limitations on using a shelf registration statement for primary “at-the-market” offerings of equity securities; and
- expand the use of Forms S-3 and F-3 to allow registration of guarantees by majority-owned subsidiaries of non-convertible debt securities of other majority-owned subsidiaries or the parent.

In addition, the Proposals would allow limited incorporation by reference into Forms S-1 and F-1 and eliminate Forms S-2 and F-2.

PROSPECTUS DELIVERY-RELATED PROPOSALS

The Proposals would implement a new “access equals delivery” model with respect to final prospectuses – the final prospectus delivery obligations of issuers, brokers and dealers would generally be satisfied if the issuer files the final prospectus with the SEC within a specified time frame, rather than by delivering copies to each investor. However, the Proposals

would generally require that investors be sent a notice informing them that a sale was made pursuant to a registration statement or in a transaction otherwise subject to the prospectus delivery requirements.

As with the communications-related Proposals, the Proposals to liberalize the prospectus delivery requirements would generally not apply in the context of offerings relating to business combination transactions or to offerings made by registered investment companies.

EXCHANGE ACT DISCLOSURE-RELATED PROPOSALS

The Proposals would require issuers to include “risk factor” disclosure in their annual reports on Form 10-K or 20-F filed under the Securities Exchange Act of 1934 and, in the case of companies reporting on Form 10-Q, to reflect in their quarterly reports on Form 10-Q any material changes from the risks disclosed in a prior annual or quarterly report.

The Proposals would also require “accelerated filers,”³ which includes most Form S-3 or F-3-eligible issuers, to disclose in their annual reports on Form 10-K or 20-F the substance of any unresolved written comments regarding their periodic filings under the Exchange Act received from the SEC staff more than 180 days before the end of their fiscal year if the accelerated filer believes such unresolved comments are material.

LIABILITY-RELATED ISSUES UNDER THE PROPOSALS

In the Proposing Release, the SEC states that it interprets the liability provisions of Section 12(a)(2) and Section 17(a)(2) of the Securities Act to require that information be conveyed to an investor at or prior to the time of the contract of sale in order to be taken into account for purposes of assessing whether the information available to the investor includes or represents a material misstatement or omission. Under this interpretation, information conveyed to an investor subsequent to the time of sale would be disregarded in determining liability unless a new contract of sale was established after the investor was given access to the additional information. The Proposals would codify this interpretation. Accordingly, under the SEC interpretation, previously undisclosed information in the final prospectus that corrects a material misstatement or omission in the preliminary prospectus would not be taken into account for purposes of liability under Section 12(a)(2) and Section 17(a)(2) where an oral contract of sale was obtained prior to the delivery of the final prospectus. In light of this interpretation, a seller that wishes to have the disclosure in the final prospectus taken into account for liability purposes under Section 12(a)(2) and Section 17(a)(2) would need to either avoid entering into a contract of sale with the purchaser prior to delivery of the final prospectus or revise any prior sale contract and enter into a new contract of sale with the purchaser once the final prospectus (or other corrective disclosure) has been made available.

³ An “accelerated filer” is a reporting company that, as of the end of its fiscal year has (1) an aggregate market value of voting and non-voting common equity held by non-affiliates of at least \$75 million (computed as of the last business day of the company’s most recently completed second fiscal quarter), (2) been a reporting company for at least 12 months and (3) previously filed at least one annual report.

In addition, the Proposals would codify that an issuer in a primary offering of securities, regardless of the form of the underwriting arrangement, is a "seller" for purposes of Section 12(a)(2) liability.

The Proposals relating to the registration process also address the means by which issuers may include information in a shelf registration statement. In particular, the Proposals would provide that a prospectus supplement filed in connection with a shelf takedown would be deemed to be part of, and included in, the shelf registration statement and that a new effective date for the shelf registration statement for Section 11 liability purposes would be established at the time of each such takedown. Accordingly, in a shelf takedown, Section 11 liability would attach to a registration statement that would be deemed to include the final prospectus supplement. This approach contrasts with liability under Section 12(a)(2) and Section 17(a)(2), which, under the SEC's interpretation, is determined based on the disclosure available to the investor at the time of the contract of sale, which may occur prior to the availability of the final prospectus supplement.

KEY DEFINED TERMS USED IN THE PROPOSALS

The Proposals introduce a number of new terms and concepts:

"WELL-KNOWN SEASONED ISSUER"

For purposes of the communications and registration process reforms, issuers would be divided into four different categories. The most significant of these is a new category of issuer known as a "well-known seasoned issuer" ("WKSI").

A WKSI would be an issuer that:

- is eligible to register a primary offering of its securities on Form S-3 or F-3 as of the last business day of the most recently completed second fiscal quarter prior to the filing date of its Form 10-K or 20-F;
- has *either* a market value of its outstanding common equity held by non-affiliates of \$700 million or more *or* has issued in the last three years at least \$1 billion aggregate amount of debt securities registered under the Securities Act and will register only debt securities, in each case measured as of the last business day of the most recently completed second fiscal quarter prior to the filing date of its Form 10-K or 20-F; and
- is current and timely in, and has been subject to, Exchange Act reporting for at least the preceding 12 calendar months as measured at the time of filing the registration statement.

In addition, a majority-owned subsidiary of a WKSI would be considered a WKSI in respect of certain offerings of guaranteed non-convertible debt securities by such entity.

OTHER CATEGORIES OF ISSUERS

Issuers that do not qualify as WKSI would be divided into three additional categories—“seasoned issuers,” “unseasoned issuers” and “non-reporting issuers.”

Seasoned Issuer

A “seasoned issuer” would be an issuer that does not qualify as a WKSI, but that is eligible to use Form S-3 or F-3 to register a primary offering of securities by or on its behalf, on behalf of its subsidiary, or on behalf of a person of which it is a subsidiary. Majority-owned subsidiaries eligible to use Form S-3 or F-3 for offering their securities would also be seasoned issuers.

Unseasoned Issuer

An “unseasoned issuer” would be an issuer that is required to file Exchange Act reports, but that does not satisfy the requirements of Form S-3 or F-3 for a primary offering of its securities. The Proposals would treat issuers that file Exchange Act reports voluntarily as unseasoned issuers.

Non-reporting issuer

A “non-reporting issuer” would be an issuer that is not required to file Exchange Act reports and is not filing such reports voluntarily (i.e., an IPO issuer).

“INELIGIBLE ISSUER”

Under the Proposals, an issuer would lose its WKSI status and be reclassified as an “ineligible issuer” if:

- the issuer is not current in its Exchange Act reporting obligations;
- the issuer is subject to a “going concern” audit report or was recently in bankruptcy or receivership;
- the issuer is convicted of certain enumerated criminal offenses or enters into a settlement agreement with any governmental agency or becomes subject to a judicial or administrative decree or order involving allegations of violations of federal securities laws or regulations; or
- the issuer is subject to any refusal or stop order under the Securities Act.

In addition, the following entities would not qualify as WKSI:

- asset-backed issuers;

- blank check companies, shell companies or penny stock issuers, or limited partnerships offering and selling their securities other than through a firm commitment underwritten offering; and
- registered investment companies or a business development companies.

An issuer registering an offering relating to a business combination transaction would also, for purposes of such an offering, be considered an ineligible issuer.

“WRITTEN COMMUNICATION”

The Proposals would define “written communication” to include any communication that is written, printed or broadcast or is a “graphic communication.” “Graphic communication” would, in turn, be defined to include all forms of electronic media, including, but not limited to, audiotapes, videotapes, facsimiles, CD-ROM, electronic mail, Internet websites and substantially similar messages widely distributed (rather than individually distributed) on telephone answering or voicemail systems, computers, computer networks and other forms of computer data compilation.

The effect of these two definitions is that, for regulatory purposes, “written communications” will encompass virtually any method of communication other than oral communications, such as live telephone calls (whatever the medium by which they are carried, including the Internet) and other direct oral communications.

COMMUNICATIONS-RELATED PROPOSALS

The Securities Act restricts the types of communications that issuers and offering participants (such as underwriters) may make during registered offerings. Historically, these restrictions have principally focused on the timing of the communications and, only secondarily and in certain circumstances, on their content. Consequently, issuers and offering participants have been prohibited from communicating at certain times during the offering process even where the communications are factually accurate. Under the current regulatory regime, all offers, in whatever form, are prohibited before the registration statement is filed. The term “offer” is broadly interpreted to include publicity that may have the effect of conditioning the market or of arousing public interest in the issuer or its securities. Between the filing of the registration statement and its effectiveness, offers made in writing are limited to the “statutory prospectus” that conforms to the information requirements of Section 10 of the Securities Act. Accordingly, under the current regulatory regime, the only written offer that is permitted during the period between filing and effectiveness of the registration statement is a preliminary prospectus, which must be filed with the SEC. After the registration statement is declared effective, offering participants may still make written offers only through a statutory prospectus, although they may use additional written offering materials if a final prospectus that meets the requirements of Section 10(a) of the Securities Act precedes or accompanies those materials.

The communications-related Proposals would liberalize these restrictions on a wide range of communications. The extent of the relaxation in the communications restrictions would vary depending upon the category of issuer, with WKSIs receiving the greatest latitude to communicate around the time of a registered offering.

30-DAY BRIGHT LINE EXCLUSION FOR ALL ISSUERS FROM PROHIBITION ON OFFERS PRIOR TO FILING A REGISTRATION STATEMENT

Proposed Rule 163A would establish a safe harbor from the gun-jumping restrictions for information communicated by or on behalf of an issuer more than 30 days before the filing of a registration statement. These communications would not constitute an offer for purposes of the prohibition on pre-filing offers in Section 5(c) of the Securities Act.

For purposes of the 30-day bright line exclusion and the other Proposals, information would be considered released or disseminated “by or on behalf of an issuer” if the issuer (or its agent or representative) authorized and approved its use before its release or dissemination.

To qualify for the safe harbor, the communications may not reference a securities offering and the issuer must take reasonable steps to prevent further distribution or publication of such communications during the 30 days immediately preceding the filing of the registration statement. The exemption would not be available for any communication that, although in technical compliance, is part of a plan or scheme to evade the requirements of Section 5 of the Securities Act.

The safe harbor would not be available for communications regarding business combination transactions or offerings registered on Form S-8 or to investment companies and other ineligible issuers.

PERMITTED CONTINUATION OF ONGOING COMMUNICATIONS DURING AN OFFERING

The Proposals would also introduce several new safe harbors from existing restrictions under the Securities Act relating to gun-jumping and the making of written offers outside the context of the statutory prospectus for continuing on-going communications of certain information during a registered offering. Ongoing communications falling within these safe harbors would be deemed not to be offers under Section 5(c) of the Securities Act.

Safe Harbor for Reporting Issuers for Regularly Released Factual Business and Forward-Looking Information

Proposed Rule 168 would establish a safe harbor available to reporting issuers for regularly released or disseminated factual business information and forward-looking information prior to or during a registered offering.

The Proposals would define “factual business information” as:

- factual information about the issuer or some aspect of its business;

- advertisements of, or other information about, the issuer's products or services;
- factual information about business or financial developments with respect to the issuer;
- dividend notices; and
- factual information set forth in the issuer's Exchange Act reports.

The Proposals would define "forward-looking information" as:

- projections of the issuer's revenues, income (loss), earnings (loss) per share, capital expenditures, dividends, capital structure and other financial items;
- statements about management's plans and objectives for future operations, including plans or objectives relating to the products or services of the issuer;
- statements about the issuer's future economic performance; and
- assumptions underlying or relating to any of the foregoing.⁴

In order to qualify for the Proposed Rule 168 safe harbor, factual business information or forward-looking information could not include information about the registered offering or information released or disseminated as part of the offering activities in the registered offering. In addition, the safe harbor would be available only when:

- the issuer has previously released or disseminated the same type of information in the ordinary course of its business; and
- the information is released or disseminated in the ordinary course of the issuer's business and the timing, manner and form in which the information is released or disseminated is materially consistent with similar past disclosures.

The Proposals would not establish any minimum time period during which the same type of information must previously have been released or disseminated by the issuer. However, the safe harbor would require the issuer to have a track record of releasing the particular type of information, and the Proposing Release instructs issuers to consider the frequency and regularity with which they have released the same type of information in assessing the availability of the safe harbor.

⁴ The Proposals define "forward-looking information" using essentially the same categories of statements that are defined as "forward-looking statements" in the statutory safe harbor established by the Private Securities Litigation Reform Act of 1995. An issuer's communications of forward-looking information in reliance on Proposed Rule 168 would still have to satisfy the conditions of the statutory safe harbor in order to receive its protections for the content of the information.

Safe Harbor for Non-Reporting Issuers for Regularly Released Factual Business Information

Proposed Rule 169 would establish a safe harbor available to non-reporting issuers for regularly released or disseminated factual business information (but *not* forward-looking information) prior to or during a registered offering. In order to qualify for the Proposed Rule 169 safe harbor, the factual business information could not include information about the registered offering or information released or disseminated as part of the offering activities in the registered offering.

As with the safe harbor for reporting issuers, the safe harbor would be available only when the issuer has previously released or disseminated the same type of information in the ordinary course of its business and the information is released or disseminated in the ordinary course of the issuer's business materially consistently with similar past disclosures. The safe harbor would also require, however, that the factual business information be released or disseminated to persons, such as customers and suppliers, other than in their capacities as investors or potential investors in the issuer's securities, by the issuer's employees or agents who regularly and historically have provided such information to such persons. Accordingly, information released by a non-reporting issuer at an investor conference would not be protected by the proposed safe harbor.

EXEMPTION FOR ORAL AND WRITTEN OFFERS BY WKSIS BEFORE THE FILING OF A REGISTRATION STATEMENT

Proposed Rule 163 would establish an exemption from the existing restrictions under the Securities Act relating to gun-jumping and the making of written offers outside the context of the statutory prospectus for oral and written offers made by or on behalf of eligible WKSIs prior to the filing of a registration statement. In an offering by an eligible WKSI that will be registered under the Securities Act, an offer by or on behalf of the WKSI, whether oral or written, would be exempted from the prohibitions in Section 5(c) on pre-filing offers. However, any exempted written offer by or on behalf of a WKSI would be a prospectus under Section 2(a)(10) and a "free writing prospectus" (discussed below) which would need to be filed with the SEC.

To be eligible for exemption, a written offer must contain an SEC-mandated legend and must be filed with the SEC promptly upon the filing of the registration statement or post-effective amendment covering the offered securities. The exemption would not be available for communications regarding business combination transactions or offerings registered on Form S-8 or to investment companies and other ineligible issuers.

EXPANSION OF RULE 134 SAFE HARBOR FOR LIMITED PUBLIC NOTICES

Rule 134 currently provides a safe harbor from the Securities Act communications restrictions for "tombstone" advertisements and certain other limited public notices about an offering made after an issuer files a registration statement. The type of information that may be contained in any such notice, however, has historically been narrowly circumscribed. The Rule

134 safe harbor operates by excluding such notices from the definition of “prospectus” under Section 2(a)(10) of the Securities Act. The Proposals would similarly exclude Rule 134 notices from the definition of free writing prospectus.

The Proposals would expand the information permitted in a Rule 134 notice to include:

- increased information about an issuer and its business, including where to contact the issuer;
- more information about the terms of the securities being offered, but not a detailed term sheet (however, a detailed term sheet may be delivered under certain circumstances as a free writing prospectus);
- an expanded scope of permissible factual information about the offering itself, including underwriter information;
- more factual information about procedures for account opening and submitting indications of interest and conditional offers to buy the offered securities; and
- expanded disclosure regarding credit ratings to include the security rating reasonably expected to be assigned.

The Proposals would also make minor modifications to the information that is required to be included in a Rule 134 notice. The Proposals would eliminate the reference to state securities laws in the SEC-mandated legend and the requirement to specify whether the financing is a new financing or a refunding.

FREE WRITING PROSPECTUSES

The Proposals would expand the scope of written communications related to registered offerings that are permitted. A qualifying written communication would be known as a “free writing prospectus.”

Definition of “Free Writing Prospectus”

A free writing prospectus would be defined as any written communication that constitutes an offer to sell or the solicitation of an offer to buy the securities relating to a registered offering that is used after the registration statement is filed (or, in the case of a WKSI, whether or not such registration statement is filed) and is made by means *other than*:

- a prospectus satisfying the requirements of Section 10(a) of the Securities Act or SEC rules permitting preliminary or summary prospectuses; or
- a written communication that is excepted from the definition of prospectus under Section 2(a)(10)(a) because prior to or at the same time with such communication a

Section 10(a)-compliant prospectus was sent or given to the recipient of the written communication.

Accordingly, communications that would not be considered offers or prospectuses for purposes of the Securities Act restrictions relating to gun-jumping and the making of written offers outside the context of the statutory prospectus would *not* be free writing prospectuses – e.g., Rule 134 notices, Rule 135 communications, regularly released factual business information and forward-looking information falling within the new proposed Rule 168 and 169 safe harbors and research reports falling within the expanded Rule 137, 138 and 139 safe harbors.

Permitted Use of a Free Writing Prospectus After the Filing of a Registration Statement Under Proposed Rules 164 and 433

Proposed Rule 164 would permit the use of a free writing prospectus after the filing of a registration statement if it meets the conditions of Proposed Rule 433, which sets out eligibility, information, legend, filing and record retention conditions.

Delivery and/or Availability of Statutory Prospectus

In the case of non-reporting issuers and unseasoned issuers, if the free writing prospectus is prepared by or on behalf of (or consideration is given by) the issuer or an offering participant, the statutory prospectus must accompany or precede the free writing prospectus. However, if the free writing prospectus is prepared by a person in the media that is not affiliated with, or paid by, the issuer or an offering participant, the statutory prospectus need not accompany or precede the free writing prospectus but the issuer must have filed the statutory prospectus with the SEC.

In the case of seasoned issuers and WKSIs, issuers and offering participants would be permitted to use a free writing prospectus if the statutory prospectus (which, in a shelf offering, may be the base prospectus) has been filed with the SEC. In addition, under Proposed Rule 163, WKSIs (but not other offering participants) would also be permitted to use free writing prospectuses prior to filing the relevant registration statement.

Filing the Free Writing Prospectus

Permitted use of a free writing prospectus would under certain circumstances also be conditioned on filing such free writing prospectus or information contained in such free writing prospectus with the SEC, generally by no later than the date of first use. An issuer would be required to file:

- any free writing prospectus prepared by or on behalf of the issuer (an “issuer free writing prospectus”);
- any free writing prospectus used by the issuer;

- any material information about the issuer or its securities that has been provided by or on behalf of the issuer (“issuer information”) contained in a free writing prospectus prepared by another person; and
- any free writing prospectus prepared by any person that contains only a description of the final terms of the issuer’s securities (preliminary term sheets would not be subject to filing).

Accordingly, there would generally be no requirement that underwriters and other offering participants file the free writing prospectuses that they prepare, including information prepared by underwriters or offering participants on the basis of, but not containing, issuer information. Underwriters and other offering participants would, however, be required to file any free writing prospectus that they distribute in a manner reasonably designed to lead to its broad, unrestricted dissemination, such as by the inclusion of the free writing prospectus on an unrestricted website or by the distribution of a free writing prospectus as a press release.

The requirement to file a free writing prospectus would not apply if the free writing prospectus is substantially the same as, and does not contain substantive changes from or additions to, a free writing prospectus already filed. Similarly, the requirement to file issuer information in a free writing prospectus of a person other than the issuer does not apply if the information is included (including through incorporation by reference) in a prospectus or free writing prospectus previously filed that relates to the offering.

Free writing prospectuses subject to a filing requirement would be required to be filed no later than the date of first use, except for final term sheets, which would be required to be filed within two days of the later of the date such terms have become final and the date of first use, and media publications, which would be required to be filed within one business day after publication.

A filed free writing prospectus would *not* become part of the registration statement. Proposed Rule 408 would further provide that, unless otherwise required to be included in the registration statement, the failure to include in a registration statement information included in a free writing prospectus will not, solely by virtue of the inclusion of such information in the free writing prospectus, be considered an omission of material information required to be included in the registration statement.

Informational Requirements for the Free Writing Prospectus

The discussion in the Proposing Release states that there are no informational requirements for a free writing prospectus other than an SEC-mandated legend.⁵ However,

⁵ Proposed Rule 433 would generally require that a free writing prospectus contain a prominent SEC-mandated legend in the following form:

“[Issuer’s name] has filed a registration statement (including a prospectus) with the SEC for this offering. Before you invest, you should read the prospectus in it and other documents the issuer has

Proposed Rule 433 would require that a free writing prospectus not contain information inconsistent with the relevant statutory prospectus.

Record Retention Condition

Issuers and offering participants would be required to retain all free writing prospectuses they have used for three years. In addition, the SEC staff would be authorized to request any free writing prospectuses prepared or used by the issuer, any underwriter or any participating dealer.

The rules permitting the use of free writing prospectuses would not be available to registered investment companies and other ineligible issuers or apply in the context of a business combination transaction.

Proposed Rule 433 and Electronic Road Shows

Proposed Rule 433 would provide that road shows transmitted or made available by means of graphic communication (“electronic road shows”) are free writing prospectuses. However, electronic road shows would not be required to be filed with the SEC if (1) the issuer makes at least one version of a *bona fide* electronic road show available without restriction to all investors no later than the transmission of such electronic road show⁶ and (2) the issuer complies with the above-outlined filing requirements for any issuer information provided at an electronic road show.

A live road show would continue to be considered an oral communication and, accordingly, would not constitute a free writing prospectus. The Proposing Release specifically requests comment, however, as to whether visual presentations such as slides or power point presentations used but not distributed at live road shows should be considered free writing prospectuses.

(cont'd.)

filed with the SEC for more complete information about [issuer’s name], including any risks affecting the issuer or its securities, and this offering. You may get these documents for free by visiting EDGAR on the SEC Web site at www.sec.gov and clicking on _____. Alternatively, the company, any underwriter or any dealer participating in the offering will arrange to send you the prospectus if you request it by calling toll-free 1-8[xx-xxx-xxxx]. This document is a written communication that is an offer pursuant to a free writing prospectus.”

The legend may also indicate that the documents are also available by accessing the issuer’s website and provide the Internet address and the particular location of the documents on the website, although issuers may be hesitant to include such a statement to the extent that a reference to the company website might present a risk that other information on the website could be regarded as offering-related.

⁶ SEC staff members have preliminarily indicated that a version of a road show may not fail to qualify as a *bona fide* electronic road show solely by reason of its omitting projections included in other road show presentations.

Proposed Rule 433 and Free Writing Prospectuses Published or Distributed by the Media

Under the Proposals, any written communication about an issuer or its securities published or disseminated by an unaffiliated person in the media for which an issuer or any offering participant provided information would be considered a free writing prospectus prepared by or on behalf of the issuer or offering participant, as the case may be. In such circumstances, issuers and offering participants would be required to file, and become subject to liability for the content of, any media publication for which they provide information.

If no consideration is paid by the issuer or offering participant in relation to the media publication and the issuer or offering participant files the media publication (with the SEC-mandated legend) with the SEC within one business day after the publication or dissemination of the media publication, then the statutory prospectus would not need to accompany or precede the media publication (in the case of a non-reporting issuer or unseasoned issuer) and the media publication would not need to comply with the requirements that free writing prospectuses be consistent with the statutory prospectus and contain the SEC-mandated legend.

Proposed Rule 433 and Website Communications

Proposed Rule 433 would explicitly provide that an offer of an issuer's securities on its website (or hyperlinked from the website) is a written offer and, unless otherwise exempt from the prospectus requirements of Section 5(b)(1) of the Securities Act, subject to the filing conditions of that rule. However, historical issuer information that is identified as such and located in a separate section of an issuer's website containing historical issuer information would not be considered a free writing prospectus unless the information has been included in a prospectus of the issuer for the offering or is otherwise used or identified in connection with the offering.

NARROWING OF EXCLUSION UNDER REGULATION FD FOR DISCLOSURES MADE IN CONNECTION WITH A REGISTERED SECURITIES OFFERING

In 2000, the SEC adopted Regulation FD, which requires that, whenever an issuer, or a person acting on an issuer's behalf, intentionally discloses material nonpublic information to securities market professionals or holders of the issuer's securities who may trade on the basis of the information, the issuer must make simultaneous public disclosure of that information. (In the case of inadvertent disclosure of material nonpublic information, the issuer must promptly make public disclosure of that information.) With limited exceptions, Regulation FD currently does not apply with respect to any disclosure made in connection with a registered securities offering.⁷

⁷ The existing Regulation FD exception for disclosures made in connection with a registered offering does not apply in the context of certain offerings that are generally of an ongoing and continuous nature, including secondary offerings, dividend or interest reinvestment plans, employee benefit plans, the exercise of outstanding options, warrants or rights, the conversion of outstanding securities, pledges of securities as collateral and issuances of American depositary shares.

The Proposals would limit the registered offering exclusion from Regulation FD to disclosures made in connection with registered offerings involving capital formation for the account of the issuer and underwritten offerings that are both an issuer capital formation and a selling securityholder offering.

The Proposals would also limit the exclusion to disclosures made in the following communications:

- a registration statement filed under the Securities Act, including a prospectus contained therein;
- a free writing prospectus used after filing of the registration statement and satisfying the requirements of Rule 433 or a communication falling within the exception to the definition of prospectus in clause (a) of Section 2(a)(10) because prior to or at the same time with such communication a Section 10(a) prospectus was sent or given;
- any other Section 10(b) prospectus;
- a notice permitted by Rule 135;
- a communication permitted by Rule 134; and
- an oral communication made in connection with the registered securities offering after filing of the registration statement.

The Proposing Release explains that the proposed amendments to Regulation FD are designed to clarify that only those communications that are directly related to a registered capital raising securities offering are excluded from the operation of Regulation FD so that, for example, the publication of regularly released factual business or forward-looking information or pre-filing communications *would* be subject to Regulation FD.

AMENDED EXEMPTIONS FOR RESEARCH

Rules 137, 138 and 139 under the Securities Act currently allow, subject to specified conditions, research reports in respect of an issuer to be distributed during the offering period without these reports being considered an impermissible offer under the Securities Act. Rule 139 permits issuer-specific research reports in respect of Form S-3 or F-3 eligible issuers (and certain other larger foreign private issuers) to continue to be published if the reports have been distributed with “reasonable regularity” in the normal course of a broker’s or dealer’s business. Rule 139 also allows industry-specific research reports issued with reasonable regularity if, among other conditions, a no more favorable opinion or recommendation is published during the offering period. Rule 138, in effect, allows research reports on debt or debt-like securities during the pendency of offerings of equity or equity-equivalent securities, and vice versa, and Rule 137 permits research reports by a broker or dealer not participating in an offering. Rules 138 and 137 are limited to specified, albeit different, classes of reporting issuers.

Proposed amendments to Rule 139 would amend the exemption for research by a broker or dealer that is a participant in a distribution of securities by specified categories of larger issuers. In the case of issuer-specific reports, Proposed Rule 139 would remove the requirement that the publication be distributed with reasonable regularity. However, the broker or dealer must have previously distributed or published research reports about the issuer or its securities (i.e., not be initiating coverage). In the case of industry-related reports, Proposed Rule 139 would expand the exemption to apply to research reports on all reporting issuers that are current in their periodic Exchange Act reports. The safe harbor would not, however, extend to research regarding blank check companies, shell companies, penny stock issuers or certain larger foreign private issuers. Rule 139 would also remove the prohibition on a broker or dealer making a more favorable recommendation than the one it made in the last publication. However, the research report must contain similar type of information about the issuer or its securities as contained in prior reports.

Proposed amendments to Rule 138 would expand the exemption for research by a broker or dealer that is a participant in a distribution of an issuer's equity or equity-equivalent securities to publish or distribute research that is confined to that issuer's debt or debt-like preferred securities, and vice versa, if it publishes or distributes the research in the regular course of its business to apply to research reports on all reporting issuers that are current in their periodic Exchange Act reports. The Rule 138 safe harbor would not, however, extend to research regarding blank check companies, shell companies, penny stock issuers or certain large foreign private issuers. Proposed Rule 138 would add a new condition that the broker or dealer have previously published or distributed research reports on the types of securities that are the subject of the report in the regular course of its business.

Proposed amendments to Rule 137 would expand the exemption for research by a broker or dealer that is not an offering participant to apply to securities of any issuer, including non-reporting issuers. The safe harbor would not, however, extend to research regarding blank check companies, shell companies or penny stock issuers.

SECURITIES ACT REGISTRATION PROCESS- RELATED PROPOSALS

AUTOMATIC SHELF REGISTRATION FOR WKSIS

The Proposals would allow eligible WKSIs to file "automatic shelf registration statements" that become effective immediately upon filing – without SEC staff review. An automatic shelf registration statement would be available for all primary or secondary offerings of securities registered by eligible WKSIs on Form S-3 or F-3. WKSIs would be permitted to register on an automatic shelf registration statement an unspecified amount of securities without allocating the securities registered between the issuer, its eligible subsidiaries and selling security holders.

WKSIs desiring to add to an automatic shelf registration statement new types of securities or new eligible issuers, including guarantors, and the securities such new eligible issuers intend to issue could do so by a post-effective amendment that any new issuer and its directors and requisite officers would be required to sign. Post-effective amendments to automatic shelf registration statements, like the automatic shelf registration statements themselves, would become effective immediately upon filing.

WKSIs using automatic shelf registration statements would be permitted to pay filing fees at the time of a securities offering – “pay-as-you-go” – and would only be required to pay a small initial filing fee at the time of filing the initial registration statement.

PROPOSED PROCEDURAL CHANGES REGARDING SHELF OFFERINGS

The Proposals contemplate a number of modifications to the system of shelf registration under the Securities Act.

Proposed Rules 430B and 430C

Information in the Base Prospectus

Proposed Rule 430B would codify the type of information that primary shelf eligible issuers and automatic shelf issuers could omit from a base prospectus in delayed offerings on Form S-3 or F-3. Under Proposed Rule 430B, the base prospectus would continue to be permitted to omit information that is “unknown or not reasonably available” to the issuer. In addition, a prospectus filed as part of an automatic shelf registration statement would also be permitted to omit information as to whether the offering is a primary or secondary offering, the plan of distribution for the securities, and the identification of other issuers unless known.

A prospectus filed for secondary offerings by an issuer eligible to use Form S-3 or F-3 for primary offerings would also be permitted to omit the identities of selling security holders and the amounts of securities to be registered on their behalf if the registration statement is an automatic shelf registration statement *or* if (1) the offering in which the selling security holders acquired the securities being registered on their behalf is completed, (2) the securities were issued and outstanding prior to the original date of filing of the registration statement covering the resale of the securities and (3) the registration statement refers to any unnamed selling security holders in a generic manner by identifying the transaction in which the securities were acquired.

Information omitted from the prospectus under Proposed Rule 430B may be included in the prospectus by prospectus supplement, Exchange Act report incorporated by reference or post-effective amendment. Proposed amendments to Forms S-3 and F-3 would permit issuers eligible to use such forms to incorporate by reference from Exchange Act reports all information required in the prospectus about the issuer and its securities (e.g., material changes in the plan of distribution). Proposed amendments to Rule 412 would provide that statements contained in the registration statement or prospectus themselves (in addition to those contained in

incorporated documents) may be modified by subsequently filed documents incorporated into the registration statement or prospectus.

Prospectus Supplements

Under Proposed Rules 430B and 430C, all information in a prospectus supplement would be deemed to be part of, and included in, the registration statement:

- in the case of a prospectus supplement filed other than in connection with a takedown under Proposed Rules 430B and 430C, as of the date the prospectus supplement is first used; and
- in the case of a prospectus supplement filed in connection with a takedown under Proposed Rule 430B, as of the earlier of (1) the date the prospectus supplement is first used and (2) the time of the first contract of sale of securities in the offering to which the prospectus supplement relates.

Under Proposed Rule 430B, a new effective date for a shelf registration statement is established for Section 11 liability purposes on the date a prospectus supplement filed in connection with the takedown is deemed part of the registration statement. The new effective date would not, however, be considered the filing of a new registration statement for purposes of determining form eligibility, require the filing of additional consents or constitute an updating of the prospectus for purposes of Section 10(a)(3) of the Securities Act.

Proposed Amendments to Rule 415

Proposed amendments to Rule 415 would:

- remove current limitations on the amount of certain primary securities that may be registered on Form S-3 or F-3 to the amount reasonably expected to be offered and sold within two years. These limitations would be kept, however, for securities not registered on Form S-3 or F-3 to be issued in connection with business combination transactions or offered on a continuous basis;
- eliminate “convenience shelf” complications by permitting immediate primary takedowns from a shelf registration statement on Form S-3 or F-3 without the need to file a prospectus supplement as part of the registration statement prior to effectiveness; and
- eliminate the existing limitations, currently set forth in Rule 415(a)(4), on using a shelf registration statement for primary “at-the-market” offerings that require the securities to be sold through underwriters named in the prospectus which is part of the registration statement and, where voting securities are being registered, subject to a volume limitation on the amount of securities that may be registered.

Under the proposed amendments to Rule 415, however, shelf registration statements covering secondary offerings or primary securities registered on Form S-3 or F-3 could only be used for three years following the initial effective date, whereupon a new registration statement would be required to be filed. Continuous offerings begun prior to the end of the three years would nevertheless be permitted to continue on the old registration statement until the effective date of the new registration statement, at which point the continuous offerings could continue on the new registration statement.

Proposed Amendments to Rule 424

Proposed amendments to Rule 424 would require that:

- any prospectus supplement filed pursuant to Rule 434 (which, among other things, permits the delivery of abbreviated term sheets to complete a statutory prospectus where securities are offered for cash in a firm-commitment underwritten offering or investment grade debt securities are offered on an agency basis under a medium term note program) be filed at the same time as other prospectus supplements for shelf takedowns; and
- where the terms of the securities or the plan of distribution or other information related to an offering are included in an Exchange Act report incorporated by reference, any prospectus supplement filed pursuant to Rule 424 disclose on its cover page the Exchange Act report or reports containing such information.

Expanded Availability of Form S-3 and Form F-3 for Majority-Owned Subsidiaries

Proposed amendments to Forms S-3 and F-3 would expand the categories of majority-owned subsidiaries that would be eligible to register their nonconvertible securities or guarantees on Forms S-3 and F-3 by allowing registration of offerings of guarantees by majority-owned subsidiaries of non-convertible securities of other majority-owned subsidiaries or of the parent.

PROPOSED AMENDMENTS TO FORMS S-1 AND F-1 AND ELIMINATION OF FORMS S-2 AND F-2

Proposed amendments to Forms S-1 and F-1 would expand the use of incorporation by reference by permitting a reporting issuer, other than an ineligible issuer, that has filed at least one annual report and that is current in its Exchange Act reporting obligations to incorporate by reference into its Form S-1 or F-1 its previously filed Exchange Act reports and documents. The prospectus in the registration statement at effectiveness would be required to identify specifically the incorporated documents. "Forward incorporation" (i.e., picking up subsequently filed documents) would not be permitted, however, and the ability to incorporate by reference would be conditioned upon the issuer making its Exchange Act reports and other documents readily available on its website.

The Proposals would eliminate Forms S-2 and F-2, which permit certain reporting issuers not qualifying to use Forms S-3 or F-3 to incorporate their Exchange Act reports and documents by reference into the registration statement but require that such incorporated reports or documents be delivered with the prospectus. These Forms are rarely used and, in light of the proposed amendments to Forms S-1 and F-1, would be of even less practical significance.

PROPOSED AMENDMENTS TO ISSUER UNDERTAKINGS REQUIRED BY ITEM 512 OF REGULATION S-K

Proposed amendments to the issuer undertakings required to be included in a registration statement by Item 512 of Regulation S-K would:

- clarify that for shelf registration statements filed on Form S-3 or F-3 for primary offerings, all disclosures required by the issuer undertakings can be contained in any filed prospectus supplement deemed part of and included in a registration statement or any Exchange Act report that the issuer files;
- require the issuer's undertaking that, for purposes of determining liability under the Securities Act, information in filed prospectus supplements are deemed part of and included in the registration statement and new effective dates are deemed to occur; and
- require the issuer's undertaking that, for purposes of determining liability under the Securities Act, any of the communications described in Proposed Rule 159A (discussed below) would be considered an offer or sale of securities.

PROSPECTUS DELIVERY PROPOSALS

The Proposals would implement a new "access equals delivery" model for final prospectus delivery requirements. Under the new regime, investors would be presumed to have access to the Internet to obtain filed prospectuses from the SEC's on-line EDGAR System.

Proposed Rule 172 would provide (1) an exemption to permit written confirmations of sales of securities and notices of allocation to be sent to investors without being preceded or accompanied by a final prospectus and (2) that any obligation to have a prospectus precede or accompany the delivery of a security in a registered offering is satisfied, in each case, if:

- the registration statement is effective; *and*
- the issuer has filed with the SEC a prospectus with respect to the offering that satisfies the requirements of Section 10(a), other than omitting price-related information under Rule 430A, or, for offerings relying on Proposed Rule 430B or

Proposed Rule 430C, the issuer has filed or will file the prospectus within the time required under Rule 424.⁸

Proposed Rule 173 would provide that, for each transaction involving a sale by an issuer or an underwriter to a purchaser or sale in which the final prospectus delivery requirements apply, the purchaser could be sent, in lieu of the final prospectus, a notice that the sale was made pursuant to a registration statement or in a transaction otherwise subject to the prospectus delivery requirements. Purchasers would be permitted, however, to request a copy of the final prospectus.

Proposed Rules 172 and 173 would exclude business combination transactions and offerings registered on Form S-8, and offerings by a registered investment company.

EXCHANGE ACT DISCLOSURE PROPOSALS

As a complement to the Proposals relating to registered offerings under the Securities Act, the Proposals would require issuers to include “risk factor” disclosures in their annual reports on Form 10-K or 20-F. In addition, companies reporting on Form 10-Q would be required to reflect any material changes from these previously disclosed risks in their quarterly reports on Form 10-Q. This risk factor disclosure would be of the same type as would otherwise be made in a Securities Act registration statement, excluding risk factors that would be transaction-specific.

If an accelerated filer has received written comments from the SEC staff regarding its periodic filings under the Exchange Act not less than 180 days before the end of its fiscal year to which the annual report relates, and such comments remain unresolved at the time of filing of the annual report, the Proposals would require that the accelerated filer disclose in its annual report on Form 10-K or 20-F the substance of any such unresolved comments that the accelerated filer believes are material. The disclosure may include the position of the company with respect to any such comments.

⁸ Similarly, under Proposed Rule 153, brokers or dealers would be deemed to satisfy any requirement under Section 5(b)(2) to deliver a prospectus to a broker-dealer as a result of a transaction effected on an exchange or through any trading facility or alternative trading system registered with the SEC if (1) securities of the same class are already trading on the market or through the trading facility or alternative trading system; (2) the registration statement is effective; *and* (3) the issuer has filed with the SEC a prospectus with respect to the offering that satisfies the requirements of Section 10(a) of the Securities Act, other than omitting price-related information under Rule 430A, or, for offerings relying on Proposed Rule 430B or 430C, the issuer has filed or will file such a prospectus within the time required under Rule 424.

Under proposed amendments to Rule 174, any aftermarket prospectus delivery obligation of a dealer, other than in respect of a blank check company, would be satisfied by compliance with the provisions of Proposed Rule 172

The Proposals would also provide for the inclusion of a box on the cover page of Form 10-K and Form 20-F for an issuer to check if it is filing reports voluntarily. This box is intended, in part, to alert investors and other market participants that an issuer is a voluntary filer and, as such, could cease to file its Exchange Act reports at any time. This disclosure would be for informational purposes only, and an issuer's filing obligations would not be affected by an incorrectly checked box.

LIABILITY-RELATED ISSUES UNDER THE PROPOSALS

Under the Securities Act, purchasers of an issuer's securities in a registered offering have private rights of action under Section 11 for materially deficient disclosure in registration statements and under Section 12(a)(2) for materially deficient disclosure in prospectuses and oral communications. Section 17(a) is a general anti-fraud provision that governs offers and sales of securities.

SEC INTERPRETATION REGARDING LIABILITY UNDER SECTION 12(A)(2) AND SECTION 17(A)(2)

In the Proposing Release, the SEC indicates that it interprets Section 12(a)(2) and Section 17(a)(2) as meaning that, for purposes of assessing whether information that is conveyed to an investor at the time of the contract of sale by or on behalf of a seller (including an issuer, underwriter, participating dealer, or other offering participant) includes or represents a material misstatement or omits to state a material fact necessary in order to make the statements in light of the circumstances under which they were made, not misleading, *information conveyed to the investor only after the time of the contract of sale should not be taken into account*. The Proposals would codify this interpretation in Proposed Rule 159. Accordingly, under the SEC interpretation, previously undisclosed information in the final prospectus that corrects a material misstatement or omission in the preliminary prospectus would not be taken into account for purposes of liability under Section 12(a)(2) and Section 17(a)(2) where an oral contract of sale was obtained prior to the delivery of the final prospectus. The SEC's interpretation and related proposed rulemaking may thus be of significant practical significance to issuers and offering participants that have routinely included previously undisclosed updating information in the final prospectus.

The Proposals relating to the use of free writing prospectuses also give rise to important issues regarding the Section 12(a)(2) liability of issuers and offering participants. Whereas under the current rules issuers and underwriters generally all use only the same written offering document, this would not necessarily continue to be the case if the Proposals are adopted. As discussed below, an issuer would, under the Proposals, be subject to liability under Section 12(a)(2) for its registration statement and any statutory prospectus relating to the offering and any free writing prospectus prepared by or on behalf of the issuer and issuer information included in any other free writing prospectus, as well as any other communication made by or on behalf of the issuer. Underwriters would be subject to liability under Section

12(a)(2) for statutory prospectuses and any free writing prospectuses they use. We do not believe, however, that the Proposals are intended to subject underwriters to liability for free writing prospectuses that they do not communicate to investors.

RELATIONSHIP OF PROPOSALS AND SEC INTERPRETATION TO LIABILITY UNDER SECTION 11

Under Section 11, liability attaches at the time the registration statement or any post-effective amendment becomes effective. Proposed Rules 430B and 430C address the times at which prospectus supplements are deemed to be included in registration statements and Proposed Rule 430B establishes new effective dates for shelf registration statements for liability purposes for shelf takedowns.

Under Proposed Rule 430B, a new effective date for a shelf registration statement is established for liability purposes for a shelf takedown on the date a prospectus supplement filed in connection with the takedown is deemed part of the registration statement, which is the earlier of the date the prospectus supplement is first used and the time of the first contract of sale of securities in the offering to which the prospectus supplement relates.

Accordingly, in a shelf takedown, Section 11 liability attaches to a registration statement that is deemed to include the final prospectus supplement whereas, under the SEC's interpretation, liability under Section 12(a)(2) and Section 17(a)(2) is determined based on the disclosure conveyed to the investor at the time of the contract of sale, which may be prior to the availability of a final prospectus supplement.⁹ In light of this interpretation, a seller that wishes to have the disclosure in the final prospectus taken into account for liability purposes under Section 12(a)(2) and Section 17(a)(2) should either avoid entering into a contract of sale with the purchaser prior to delivery of the final prospectus or revise any prior sale contract and enter into a new contract of sale with the purchaser once the final prospectus (or other corrective disclosure) has been made available.

ISSUER AS THE SELLER FOR PURPOSES OF SECTION 12(A)(2) LIABILITY IN A PRIMARY OFFERING

In the past, questions have arisen as to whether an issuer selling securities in an offering underwritten on a firm commitment basis can be liable under Section 12(a)(2) to the ultimate purchaser of the securities since conceptually it is the underwriters, rather than the issuer, that is selling the securities to the purchaser. Proposed Rule 159A would provide that, for purposes of Section 12(a)(2), "seller" shall include the issuer of the securities with regard to, and the issuer shall be considered to offer or sell the securities by means of, any of the following communications made by or on behalf of the issuer in connection with primary offerings of

⁹ Footnote 247 in the Proposing Release contemplates that the seller and the purchaser may, however, by agreement revise their prior sale contract and enter into a new contract of sale with respect to the offered securities, whereupon the time of the contract of sale with that purchaser would be the time of the new contract of sale.

securities by the issuer, regardless of the underwriting method used to sell the issuer's securities:

- an issuer's registration statement relating to the offering and any preliminary prospectus and prospectus supplement relating to the offering filed pursuant to Rule 424 or 497;
- any free writing prospectus prepared by or on behalf of the issuer and, in the case of an issuer that is an open-end management investment company, any profile provided pursuant to Rule 498;
- information about the issuer or its securities provided by or on behalf of the issuer and included in any other free writing prospectus or, in the case of an issuer that is a registered investment company or a business development company, in any advertisement pursuant to Rule 482; and
- any other communication made by or on behalf of the issuer.

A communication by an underwriter or dealer participating in an offering would not be on behalf of the issuer solely by virtue of that participation but, depending on the facts and circumstances, could be a communication on behalf of an issuer to the extent it contained issuer information.

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This memorandum is for general information purposes only and should not be regarded as legal advice. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as additional memoranda regarding recent corporate developments, can be obtained from our website, www.simpsonthacher.com.

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