SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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October 17, 2007

VIA E-MAIL (rule-comments@sec.gov)

Ms. Nancy M. Morris, Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: **File No. S7-12-07**

Dear Ms. Morris:

The Society of Corporate Secretaries and Governance Professionals is a professional association, founded in 1946, with over 4,000 members who serve more than 3,000 issuers. Responsibilities of our members include supporting the work of corporate boards of directors, their committees and executive management regarding corporate governance and disclosure. Our members ensure issuer compliance with the securities laws and regulations, corporate law, stock exchange listing requirements and the accounting rules. The majority of Society members are attorneys, although our members also include accountants and other non-attorney governance professionals.

We are writing this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on its proposal relating to electronic filing and simplification of Form D (SEC Release Nos. 33-8814; 34-55980; 39-2446; IC-27878, 72 Fed. Reg. 37376 (July 9, 2007)).

<u>Elimination or Restriction of the Form D Filing Requirement</u>

We note the statement in the Release that 95% of Form D filers are private issuers. For the other 5% of filers, we believe that the filing is redundant. Companies with a class of securities registered under the Securities Exchange Act of 1934 should be exempted from the Form D filing requirement because such companies are already required to provide the information specified in Item 701 of Regulation S-K regarding unregistered sales of securities in reports on Form 8-K (see Item 3.02) if the amount sold constitutes more than 1% of outstanding (5% in the case of a small business issuer) or if less, on the next Form 10-Q (Part II, Item 2) or

Form 10-K (Part II, Item 5). This requirement, which was adopted several years after the adoption of Regulation D more appropriately captures the information which is relevant in the case of a public company and is available electronically. It should be noted that the Item 701 disclosure is more accurate and of more interest to investors since it provides information regarding actual sales rather than the *potential* sales covered by a Form D. Further, the timing of the Item 701 disclosure requirement appropriately depends on the scale of the transaction. If the Item 701 disclosure requirement had existed at the time that Regulation D was adopted, it would not have been necessary to impose the Form D filing requirement on public companies. Further, elimination of the Form D filing requirement for public companies would be consistent with the Commission's ongoing efforts to reduce the regulatory burden on smaller public companies.

If public companies are exempted from the Form D filing requirement, we do not believe that it would be necessary to expand the existing Item 701 disclosure requirements relating to the sale of unregistered securities.

If the Commission believes that a complete public company exemption is not appropriate, we would urge it to consider two alternative approaches: First, the Form D filing requirement should be eliminated for companies whose securities are "covered securities," as defined in Section 18(b) of the Exchange Act. Since no state filings are required of such companies, the filing of Form D with the SEC is the only filing required in respect of private placements of "covered securities." No purpose appears to be served by continuing to require such companies to file Form D in view of the Item 701 disclosure requirements discussed above. Alternatively, and at a minimum, the requirement should be eliminated for public companies with respect to transactions, such as acquisitions of closely held corporations in which the public acquirer pays the purchase price in shares of its publicly held equity securities, that are not engaged in for capital-raising purposes.

In any case, we would urge the Commission to carefully evaluate the contents of From D and limit the required information to that which clearly serves a meaningful purpose for the securities markets and/or regulatory considerations. This would also be consistent with the Commission's efforts to reduce the regulatory burden on smaller public companies.

Timing of the Filing Requirement

We note that the Commission has previously considered the trigger date for a Form D filing to be the date when the first subscription agreement is received or funds are deposited into escrow.[1] This definition of a "sale" results in filings regarding *potential* sales rather than actual sales, which is not useful information. The Commission should define the trigger date for Form D filings the same way that it is defined for purposes of the Form 8-K Item 3.02(a) report of unregistered sales of equity securities. For purposes of Item 3.02(a), the filing is triggered when the registrant enters into an agreement enforceable against the registrant or, if none, the filing is triggered by the closing or settlement of the transaction or arrangement under which the equity securities are sold. This would comport with the commonly understood definition of a sale and provide more meaningful information since it would reflect actual sales.

[1] *See* question 82 of the Staff's Interpretive Release on Regulation D.

Content of Amendments to Form D Filings

With respect to amendments to Form D filings, the proposed revisions would require an issuer to provide current information in response to all requirements of Form D, regardless of why the amendment is filed. This seems unnecessary and, among other things, may present opportunities for inadvertent errors in re-entering unchanged information. Further, this would make it difficult to determine what had changed. We suggest a middle ground in which the information provided in an amended filing be limited to information that has changed materially (as for example, in the case of filings under Section 13 of the 1934 Act).

Technical Issues

In connection with the requirement to file Form D electronically, an issuer would have to complete the data entry quickly enough to avoid a time-out ending the session, and the system would not provide a means by which an incomplete form can be saved from session to session. It seems to us that it should be possible to save an incomplete form for completion at a later time.

Similarly, it appears that an issuer will not be able to prepare a filing offline and then access the system for submission; rather, the filing will have to be both prepared and submitted online. From a practical standpoint, it would seem desirable for an issuer to be able to prepare a filing offline and then access the system to submit it.

We appreciate this opportunity to share our views with you, and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

The Society of Corporate Secretaries and Governance Professionals

By: Neila Radin, Chair
Securities Law Committee

cc: Christopher Cox, Chairman
Paul S. Atkins, Commissioner
Kathleen L. Casey, Commissioner
Annette L. Nazareth, Commissioner
John W. White, Director, Division of Corporation Finance

Lydia Beebe, Society Chairman
Craig Mallick, Society Chairman-Elect
David W. Smith, Society President