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Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Proposed Rule: Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3 (Release No. 33-8812) Commission File No. S7-10-07

Dear Ms. Morris:

Ernst & Young LLP is pleased to respond to the request for comment by the Securities and Exchange Commission (the Commission) on its proposal *Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3* (the Proposed Rule). Our comments are limited to those aspects of the proposal that relate primarily to financial reporting matters.

Liability Structure

Under Securities Offering Reform, which became effective in December 2005, the SEC adopted amendments in order to synchronize the liability of issuers and underwriters, without introducing "speed bumps" by changing the effective date for others with Section 11 liability. As a result, a prospectus supplement (e.g., for a takedown of securities off of a shelf registration statement) is considered to be part of the registration statement upon filing. Further, for purposes of the Section 11 liability of the issuer and any underwriter, filing a prospectus supplement establishes a new effective date for any part of the shelf registration statement, including material incorporated by reference, which relates to the respective offering of securities.

However, for purposes of Section 11 liability for directors or signing officers of the issuer, the filing of a prospectus supplement does not create a new effective date. The issuer's directors and signing officers remain liable under Section 11 for a shelf registration statement as of its initial effective date, and thereafter upon post-effective amendments and the filing of its SEC annual report.

For purposes of Section 11 liability for auditors (or other experts) that provide a consent in connection with a shelf registration statement, the filing of a prospectus supplement does not create a new effective date with respect to any portion of the shelf registration statement to which

the auditor (or other expert) previously had provided a consent. Instead, the effective date of an auditor's Section 11 liability coincides with the date that such information became part of the registration statement, which required the auditor's consent.

The Commission has requested comment on whether the potential "gap" in liability (i.e., the different Section 11 liability provisions for directors, signing officers, auditors and other experts on the one hand, and for the issuer and underwriters on the other hand) is appropriate should it allow smaller reporting companies to use shelf registration. In principle, we believe that the application of Section 11 liability to the various parties involved in any shelf registration statement should not vary based on the size of the issuer. Accordingly, we see no compelling reasons to change the Section 11 liability provisions that the SEC adopted in 2005 should the SEC conclude to extend shelf registration to smaller reporting companies.

Required Timely Financial Reporting

Currently, as a condition to using Form S-3, a public company is required to meet the eligibility conditions outlined in General Instruction I.A. of Form S-3. Among other things, General Instruction I.A. requires the issuer to have filed, in a timely manner, all the material required to be filed pursuant to Section 13, 14 or 15(d) for a period of at least twelve calendar months immediately preceding the filing of the Form S-3 registration statement. As proposed, as a condition to using Form S-3, a smaller reporting company also would be required to meet this eligibility condition (i.e., timely filing)

As we have previously commented to the SEC (File No. 265-23) that, for any public company, the loss of Form S-3 eligibility is a draconian penalty for missing a single Exchange Act reporting deadline. Notwithstanding Exchange Act Rule 12b-25 and the limited safe harbor applicable to certain items within Form 8-K, accelerated periodic and current reporting deadlines heighten the likelihood of an occasional delinquent filing. Accordingly, we urge the SEC to eliminate or substantially reduce the associated penalty of an issuer's losing Form S-3 eligibility for one year.

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We would be pleased to discuss our comments with the Commission or its staff at your convenience.

Very truly yours,