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

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

Dear Ms. Morris:

We appreciate the opportunity to comment on the Commission's proposed rule, "Revisions to the Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3" (Proposed Rule). As we indicated in our letter of April 3, 2006 to the Commission commenting on the Draft Final Report of the Advisory Committee on Smaller Public Companies, we support many of the primary and secondary recommendations outlined in that report intended to address the challenges faced by smaller public companies as U.S. capital market participants. Our comments on the Proposed Rule are limited to those areas where the auditors' participation in the capital-raising process for smaller public companies is specifically impacted by the Proposed Rule's provisions. More specifically, we are responding to the Commission's request for comment on whether it is appropriate to extend the same regulations applicable to larger public companies regarding effective dates of prospectus supplements to smaller public companies.

Under the Proposed Rule smaller companies would qualify for use of Form S-3 and Form F-3 than is currently the case. Companies with a worldwide public float of less than $75 million would be eligible for shelf registration (as long as other specified conditions are met) for the first time.

With respect to shelf registration statements, registrants typically file a registration statement on Form S-3 or Form F-3 that excludes certain information that is provided later in a prospectus supplement issued in connection with a shelf takedown. As is the case now under Rule 430B of the Securities Act of 1933 (Securities Act) for companies with public float of at least $75 million, the Proposed Rule would create a new effective date for the registration statement and impose liability under Section 11 of the Securities Act on all prospectus supplements for issuers and underwriters.

Section 11 liability would extend to the issuer's auditors only if the prospectus supplement contains new audited financial statements or other financial information as to which the auditor is an expert and to which a new consent is required.

On January 31, 2005 we responded to the Commission's request for comment on its proposed rule "Securities Offering Reform." At that time the Commission had proposed that each prospectus supplement related to a shelf registration statement would create a new effective date (and Section 11 liability) for auditors, as well as issuers and underwriters. In our letter we pointed out that,

> "… as a consequence of each prospectus supplement creating a new effective date for a registration statement, issuers that currently incorporate by reference Exchange Act reports may be required more often to revise previously issued and filed financial statements to reflect retroactive restatements of financial statements required by generally accepted accounting principles (GAAP), such as reclassifications for discontinued operations treatment and revised reportable segment presentations. Prospectively, the frequency of such required revisions is likely to increase if the Financial Accounting Standards Board's proposed standard to make accounting changes retroactive is adopted.[1] Each consent to the use of the auditors' report constitutes a reissuance of the auditors' report and would require that the financial statements be retroactively revised to comply with GAAP. Currently, shelf offering takedowns necessitate the restatement and reissuance of previously filed financial statements only when there has been a "fundamental change," as contemplated by Item 512(a)(1) of Regulation S-K, in the information set forth in the registration statement."

Securities Offering Reform, as ultimately adopted, established new rules whereby Section 11 liability for auditors does not apply to prospectus supplements unless new audited information or other information as to which the auditor is an expert is provided, necessitating the issuance of a new consent. The new rules effectively preserved the "fundamental change" concept, thereby reducing the potential for delays in capital formation that might have arisen in connection with providing an auditors' consent with each prospectus supplement. Without the modification adopted in Securities Offering Reform, AU Section 711 of the PCAOB auditing standards would have required time consuming down-to-date review procedures on every prospectus supplement, even those where no financial data was being changed or updated. This might have created a "speed bump" in the filing process where the cost and delay would have outweighed the benefits of performing the procedures.

[1] In May 2005 the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 154, *Accounting Changes and Error Corrections* (Statement No. 154). Statement No. 154 generally requires retrospective application to prior periods' financial statements of changes in accounting principle.

We believe that the same considerations described in the immediately preceding paragraph are relevant for smaller public companies eligible to use Forms S-3 and F-3, and accordingly, support the provisions of the Proposed Rule relative to this issue.

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We would be pleased to discuss our comments at any time. Please contact Glen Davison at (212) 909-5839 or gdavison@kpmg.com or Melanie Dolan at (202) 533-4934 or mdolan@kpmg.com.

Very truly yours,

KPMG LLP