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August 17, 2007

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

RE: Revisions to Eligibility Requirements for Primary Securities Offerings on Forms S-3 and F-3
File Number S7-10-07

Dear Secretary Morris:

Malizia Spidi & Fisch, PC appreciates the opportunity to submit comments on the Commission's proposal to expand the eligibility requirements for use of the Form S-3 to allow issuers with public floats of less than $75 million to use the Form S-3 for primary offerings of securities. Malizia Spidi & Fisch, PC specializes in the representation of community banks and thrifts and their holding companies in transactional matters including capital-raising and mergers and acquisitions. Our clients include many small business issuers and non-accelerated filers including many companies listed on the Over-the-Counter Bulletin Board that could potentially benefit from the proposed revisions. We also represent investment banking firms in their underwriting of offerings by community banks and thrifts.

We believe that the proposal, if adopted, would be of significant benefit to smaller issuers. The ability to forward incorporate by reference will greatly facilitate financings and simplify offering documents. The proposal properly recognizes that the Commission's EDGAR system has made comprehensive issuer information quickly and easily available which, in our review, makes it unnecessary to duplicate this information in the offering document itself. In addition to reducing the amount of time required to prepare offering documents, smaller issuers will realize cost savings by using more abbreviated documents. The ability to effect shelf registrations should also lower financing costs by allowing issuers to take advantage of favorable market opportunities.

We are concerned, however, that the utility of the new eligibility rules may be unnecessarily limited for our clients by the proposed requirement that the amount of securities sold in primary offerings on Form S-3 over any 12-month period may not exceed 20% of the issuer's public float. The limitation would apply to both debt and equity offerings. We note that this limitation was not part of the recommendation of the Advisory Committee on Smaller Public

Companies and is not imposed by the Commission larger issuers. The release states that the limitation is being proposed "in order to allow an offering that is large enough to help an issuer to meet its financing needs but small enough to take into account the effect such new issuance may have on market for a thinly traded security."

As a threshold matter, we question whether it is necessary or appropriate to impose an artificial restraint of this type. It is our experience that many smaller issuers seeking to raise capital are doing so because they are rapidly growing and may need to significantly increase their capital base to maintain that growth. The 20% limit may deny the benefits of the Form S-3 to the companies that could most benefit from it. It is also not clear to us why the amount of debt securities sold pursuant to a Form S-3 should be limited to a percentage of publicly traded equity securities or that such issuances should be presumed to affect the market for equity securities.

If the Commission believes that a limitation on aggregate issuances is appropriate to prevent dilutive issuances, we would submit that it should be structured more like the limitations in the rules of the exchanges which require shareholder approval for public offerings of common stock or securities convertible into common stock with a market value equal to 20% or more of the outstanding common stock. Such a limitation should only apply to issuances of dilutive or potentially dilutive equity securities. We further believe that the measurement, like that of the exchanges, should be based on all shares outstanding not just shares held by non-affiliates. We note that in calculating public float, most issuers exclude shares held by insiders which often constitute a significant percentage of shares outstanding. Inasmuch as an offering of equity securities is likely to increase the public float and dilute insider control, we believe that most investors would welcome a larger offering.

Finally, we recommend that the Commission make corresponding changes to the Form S-4 to allow smaller issuers to incorporate by reference to the same extent as would be permitted under the revised Form S-3. As the Form S-4 now stands, only Form S-3 eligible issuers are able to incorporate any periodic filings into a Form S-4. The Form S-4 instructions, however, state that registrants and acquired companies are only considered Form S-3 eligible if they meet the $75 million threshold of Instruction 1.A to the Form S-3. Accordingly, adoption of the proposed Instruction 1.B.6 will not effect any change in Form S-4. For the same reasons that we believe that smaller issuers should have the ability to incorporate by reference on Form S-3, however, we believe that they should be able to incorporate by reference on Form S-4.

We appreciate the opportunity to provide comments on the proposed revisions to the eligibility requirements for primary securities offerings on Form S-3.

Respectfully yours,

MALIZIA SPIDI & FISCH, PC