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January 31, 2005

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

***Re: File No. S7-38-04; Release No. 33-8501***
***Securities Offering Reform***

Dear Mr. Katz:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States and $4 trillion in annual revenues. We appreciate the opportunity to provide our views on the Commission's proposals to reform the registration and offering process under the Securities Act of 1933 ("Securities Act"). As a general matter, the Business Roundtable strongly supports these proposals, and in particular, the proposals relating to the new class of seasoned issuers known as "Well-Known Seasoned Issuers" that would be permitted more timely access to the capital markets, freer communications and "pay-as-you-go" filing fees. Nevertheless, there are certain aspects of the proposals that we believe should be revised, which are reflected in the comments set forth below.

1. <u>Definition of "Ineligible Issuer"</u>

Under the proposals, a company would lose its eligibility as a WKSI, and the resulting benefits of WKSI status, if it meets the definition of an "ineligible issuer." An ineligible issuer would include a company or any of its subsidiaries that (1) settles with a governmental agency involving allegations of any violations of the federal securities laws or (2) is the subject of any judicial or administrative decree or order arising from a governmental action that

- prohibits certain conduct or activities regarding, including future violations of, the federal securities laws;
- requires that the person cease and desist from violating any provision of the federal securities laws; or
- determines that the person violated any provision of the federal securities laws.

The proposed definition would thus deprive companies from WKSI status for any violations of the federal securities laws.

Business Roundtable believes that the definition of an "ineligible issuer" is far too broad and should be revised so that it covers only issuers who violate the antifraud provisions of the federal securities laws rather than *any* violation of the federal securities laws. The reference to violations of any provisions of the federal securities laws would deprive many companies, particularly those in the financial services industry, of the advantages provided by the proposed reforms. Moreover, companies would be discouraged from settling cases where prompt settlement would be in the public's and companies' interests. While the proposals provide that the Commission may waive the ineligibility, neither the standards nor the procedure for such a waiver have been articulated, and the necessity for such a waiver could delay an issuer's access to the capital markets.

We suggest that a more appropriate standard is that which appears in the safe harbors for forward-looking statements in Section 27A under the Securities Act and Section 21E under the Securities Exchange Act of 1934 ("Exchange Act"), as established by the Private Securities Litigation Reform Act of 1995 ("PSLRA"). These safe harbors are unavailable for companies that have violated the *antifraud* provisions of the federal securities laws, which require intent to defraud or recklessness in committing the violation. Specifically, they exclude issuers previously convicted of certain felonies and misdemeanors and issuers subject to a judicial or administrative decree or order involving a violation of the antifraud provisions of the securities laws from the forward-looking statements safe harbor provisions. While the Commission's proposing release appears to cite the PSLRA as support for making certain issuers ineligible, the proposals are, in fact, dramatically broader because of the reference to any violation of the federal securities laws.

In addition, we suggest that the Commission clarify that the application of the violation of the federal securities laws provision would apply on a prospective basis only and would not be retroactively applied to cover companies that have previously entered into settlements with the Commission relating to alleged violations of the federal securities laws, as well as other companies that are the subject of judicial or administrative decrees or orders relating to violations of the federal securities laws.

2. Disclosure of Outstanding SEC Comments in Form 10-K

The proposals would require that companies disclose in their Form 10-Ks the existence of any material SEC staff comments on their Exchange Act reports that were issued more than 180 days prior to the fiscal year end and which are still outstanding at the time the Form 10-K is filed. We believe that this requirement is unnecessary and would not provide meaningful information to investors. Moreover, it could put inordinate and undue pressure on companies to resolve any disagreements with the SEC staff. The Commission already has sufficient means to see that companies address SEC staff comments on Exchange Act reports, and the proposing release does not indicate that companies' unresponsiveness is a problem. In this regard, companies are giving ever greater attention to disclosure issues that arise as a result of the Sarbanes-Oxley Act and implementing SEC rules, as well as SEC enforcement actions.

If the Commission nevertheless determines to require such disclosure, we believe that disclosure should not be required if the company has responded to the initial SEC staff comment letter by the date of the Form 10-K filing and is in the process of resolving the comments through discussions with the SEC staff. We also believe that companies are in the best position to determine whether any outstanding SEC comments are material, as the Commission has proposed.

3. Risk Factor Disclosure in Exchange Act Reports

The proposals would require companies to include risk factor disclosure of the "most significant factors" relating to the company's business, operations, industry or financial position that may negatively impact the company's future performance in their Forms 10-K, with updates of any material changes in quarterly reports on Form 10-Q. The disclosure would be required in a separately captioned section of the Form 10-K and Form 10-Q. We believe that the proposed requirements should be revised. Many companies already provide in their Form 10-Ks the type of information that would be required in response to other Form 10-K requirements, such as Management's Discussion and Analysis and the description of business, as well as for forward-looking statements under the PSLRA. Rather than requiring a new separate section in Form 10-K and Form 10-Q, we believe that better disclosure would result and duplication and cross-references would be avoided if the Commission were simply to require disclosure of the important factors that may impact the company's business, operations, industry or financial position, to the extent not already disclosed.

We also believe the proposed item should be revised to refer to "important factors" rather than categorize the importance of the factor. This is consistent with the PSLRA safe harbor provisions for forward-looking statements that require disclosure of the "important factors that could cause actual results to differ."

4. Filing a New Shelf Registration Statement Every Three Years

Under the proposals, companies would be required to file new shelf registration statements every three years. We do not object to this requirement but are concerned that the proposals seem to impose a "blackout" period should a shelf registration statement expire after three years and the company, for some reason, fails to file a new registration statement. In such instances, companies would lose access to the capital markets for registered offerings. We therefore would suggest a grace period for expiring shelf registration statements.

5. Access Equals Delivery

The proposals would establish an "access equals delivery" model for prospectuses whereby companies generally would not be required to physically deliver a final prospectus if the prospectus has been filed with the SEC. We strongly support the "access equals delivery" proposal. In fact, we strongly encourage the Commission to expand this concept to other areas of the federal securities laws, particularly the proxy statement area. Although investor use of the Internet has increased substantially, the Commission has not reexamined its electronic media guidance in some time. While there is some limited electronic delivery of proxy materials today, expansion of the access equals delivery model to proxy materials would result in significant cost savings for companies, including printing, mailing and handling costs. In this regard, we previously have submitted a rulemaking petition to the Commission that requests a thorough review of the shareholder communication system in order to permit more cost effective communication with shareholders, particularly those who hold their securities in street name. *See* Request for Rulemaking Concerning Shareholder Communications, SEC File No. 4-493 (April 12, 2004).

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Thank you for considering our comments. Please do not hesitate to contact Thomas Lehner at Business Roundtable at (202) 872-1260 if we can provide you with further information.

Sincerely,

Steve Odland
Chairman, President & CEO
AutoZone, Inc.
Chairman
Corporate Governance Task Force
Business Roundtable

Cc: Hon. William H. Donaldson, Chairman, U.S. Securities and Exchange Commission
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Harvey J. Goldschmid, Commissioner