SIG
SUSQUEHANNA
INTERNATIONAL GROUP, LLP

January 31, 2005

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: File No. S7-38-04 Proposed Rule on Securities Offering Reform

Dear Mr. Katz:

We are writing to express our concerns about the Securities and Exchange Commission's (SEC) proposed rule on securities offering reform. Specifically, our apprehension relates to the proposed reformation of electronic road shows, which is purportedly designed to "…strike the appropriate balance between the need to market an issuer's securities to institutional investors and the desires of retail and other investors to have access to issuer information, such as management presentations, that are normally only available at road shows that often have not been open to retail investors generally."[1]

Instead of leveling the playing field between institutional and other investors, we fear the proposed reform will have the exact opposite effect by stifling the dissemination of information to both institutional and retail investors. Accordingly, the proposed rule will not promote equality in the distribution of information, and will hinder market efficiency and discourage market participation.

I. The Proposed Rule Does Not Promote Equality in the Dissemination of Information

The proposed rule provides that certain information (e.g., a PowerPoint slide) provided in a live road show would not be considered a "writing" and would not need to be filed with the SEC. Conversely, if the exact same information is provided in an electronic road show, the information would be considered a "writing" that has to be filed with the SEC and subject to the liability provisions contained in Section 12 of the Securities Act of 1933, as amended. Drawing on the reported information dearth that followed Regulation FD and in light of legal risks an issuer could assume through the dissemination of abridged information, the proposed rule will lead not only to electronic road shows being watered down versions of the live road show presentations but will also lead to a sweeping reduction in, and a possible elimination of, electronic road shows.

[1] Securities Offering Reform; Proposed Rule, Federal Register Vol. 69, No. 221, page 67415 (November 17, 2004).

From an institutional investor perspective, the proposed rule undeniably creates two classes of institutional investors. The first class will consist of wholly informed institutional investors who attend the live road show and are privy to an entire unedited presentation. Since the reporting obligations for a live road show will not require the filing of the presentation with the SEC, the information contained therein will be more analytical and in-depth. In order for the issuer to avoid the exposure attached to the filing of a "writing" with the SEC, the electronic road show participants will see a wholly different presentation. As a result, the second investor class will receive an abbreviated and edited presentation that will not contain the same quality of information provided during the live road show.

This creation of two classes of investors appears diametrically opposed to the policy position asserted by the SEC's Division of Corporation Finance in its 1999 response to Charles Schwab's request for a no-action ruling with respect to internet road shows. In the response, the SEC noted that its position rested "…on policy considerations alone, including the Commission's goal of reducing selective disclosure of material, offering-related information typically provided during road shows…"[2] The proposed rule fosters the very "selective disclosure of material, offering related information" about which the SEC was originally and rightfully concerned.

In order to understand the stifling effect the proposed rule will have on information dissemination, one need only look to the informational drought that has taken place since the introduction of Regulation FD. The SEC, aware of the likelihood that companies would suffer a reduced information base, "…undertook a study analyzing how issuers have responded to Regulation FD."[3] The results were disconcerting. SEC panelists "…believed that issuers, due to Regulation FD, refused to disclose any information, or at least any useful information, to investors."[4]

Independent analysis on the same issue yielded similar results. By way of example, "…the Thompson Financial group surveyed eighty-one public companies, and found that nearly 33 percent reported that Regulation FD had limited the flow of information they provide to analysts. Also, the Association for Investment Management and Research (AIMR #1) surveyed 423 investment analysts and portfolio managers, 57 percent of whom believed that the volume of substantive information released by public companies has decreased in the wake of Regulation FD; only 14 percent said the volume of information had increased."[5]

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[2] Securities and Exchange Commission, Staff No-Action Letter to Charles Schwab & Co., Inc. (November 15, 1999).
[3] Linda J. Yi, *Road Shows on the Internet: Taking Individual Investors for a Ride on the Information Highway*, 52 Duke L.J. 243, 264 (October 2002).
[4] *Id.* at 264.
[5] *Id.* at 264-5.

Using the results of the SEC study and independent studies on Regulation FD as a barometer, one can conclude that information conveyed to investors in an electronic road show format will be at best, limited and at worst, nonexistent.

We request the SEC to continue to promote the dissemination of information and to ensure the retention of one wholly informed class of institutional investors. To that end, the SEC should revise the proposed rule so that all investors receive the same treatment. If a presentation is not a "writing" at a live road show, the SEC should not consider it a "writing" when that same presentation is broadcast in an electronic format, provided existing no-action safeguards continue to be used. The SEC should keep the playing field level by continuing to provide an environment where investors who "attend" electronic road shows will receive the same information as their live road show attendee counterparts.

II. The Proposed Rule Hinders Market Efficiency and Discourages Market Participation

If the SEC insists on creating two classes of institutional investors through the proposed rule, institutional investors will need to attend each road show that takes place in order to ensure no informational disparity exists. The proposed rule's requirement for travel to each road show, albeit implicit, is financially onerous and operationally impractical. As a result, the proposed rule creates an environment that discourages market participation and hinders market efficiency.

Most road shows take place in Boston and New York. The cost of traveling to every road show is too high for any firm to undertake. As a result of these costs, many institutional investors that would otherwise participate in an IPO or other registered security offering will refrain from doing so because they will not predicate investment decisions on the watered down information provided in the electronic road show format. While the proposed rule is certain to reduce domestic investors' participation in U.S. offerings, the possible impact on foreign institutional investors in domestic security offerings creates a cause for further concern. Without the ability to get a full and accurate picture of a company via a complete internet road show identical to the live road show, foreign institutional investors will be reluctant to infuse capital into domestic companies.

Moreover, in order for a firm to get the most from a live road show it would need to send at least one research analyst, if not more, to each presentation. While sparing such resources may be possible for larger firms, small and mid-size firms could not afford such a luxury. Over the course of any given year, the prolonged absence of key research analysts due to their attendance at the numerous road shows would have a debilitating effect on the ability of firms to efficiently operate in the financial markets. As a result, the overall efficiency of the market as a whole will suffer.

For the foregoing reasons, we urge the Commission to reconsider its proposal regarding electronic road shows and to leave intact the existing rules and policies regarding electronic road shows.

Respectfully,

Todd Silverberg

Todd Silverberg
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