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September 4, 2008

Re: **File No. S7-18-08**
Security Ratings
Ms. Florence E. Harmon
Acting Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-9303

Dear Ms. Morris:

We are submitting this letter in response to the solicitation by the Securities and Exchange Commission (the "Commission") of comments on the proposed amendments to Regulation S-K and rules and forms under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act") related to security ratings (the "Proposed Amendments") set forth in release no. 33-8940; 34-58071 (the "Release").

We are concerned about the proposal to replace the investment grade eligibility criteria in Form S-3 and Form F-3 with a "well known seasoned issuer" or "WKSI" based issuance standard. We believe that the principal effect of replacing the investment grade eligibility standard will be to discourage an increasing number of issuers that will no longer be eligible to use primary shelf registration statements from pursuing registered offerings. This result is inconsistent with the Staff's stated "policy preference for registered offerings" as noted in the adopting release for Securities Offering Reform and as evidenced by the rule changes implemented by Securities Offering Reform which make the registration process easier for issuers to encourage them to access the public as opposed to private markets.

We believe that the Staff is significantly understating the impact of the proposed rule change when it states that "[u]sing the \$1 billion threshold, we preliminarily believe that for issuances that have occurred thus far this year, the proposed change would result in approximately six issuers filing on Form S-1 instead of on a short-form registration statement." While many investment grade issuers that do not meet the public float test will initially meet the proposed debt

issuance standard, that is largely a reflection of the current eligibility standards and historical incentives towards registered offerings. Many, if not most, of these issuers meet the proposed issuance requirement because they were eligible to use a shelf registration statement and therefore opted to pursue a registered offering as opposed to a Rule 144A offering. We respectfully submit that many of these issuers would have pursued a Rule 144A offering instead of a registered offering had they not been eligible to use a shelf registration statement. Accordingly, if the Proposed Amendments had been in effect historically, numerous frequent debt issuers would not meet the debt issuance eligibility requirements today.

We also expect that the number of issuers that meet the proposed issuance eligibility requirements to decline over time as a result of recent changes in market practice related to registration rights in Rule 144A offerings. Historically, most offerings pursuant to Rule 144A have been done with registration rights obligating the issuer to exchange the Rule 144A notes for a new series of notes pursuant to a registered exchange offer within a specified time period. The additional time and expense of conducting a registered exchange offer is one factor that has historically favored registered offerings over Rule 144A offerings. As a result of the recent amendments to Rule 144 which shortened the holding periods for securities to become freely tradable, there is a rapidly developing market practice not to require registration rights or a subsequent registered exchange offer in Rule 144A offerings. The elimination of this requirement is likely to decrease the proportion of registered offerings thereby further decreasing the number of issuers that will meet the proposed issuance eligibility requirements.

If the Commission determines to proceed with the Proposed Amendments, one minor modification that would help mitigate this unintended consequence would be to eliminate the requirement that only primary offerings for cash count towards the issuance threshold. The Release states that the rationale for the issuance threshold is that there is a "wide following in the marketplace" for these issuers and that "[t]hese issuers generally have their Exchange Act filings broadly followed and scrutinized by investors and the markets". While we agree with that premise and applaud the fact that it would also permit high yield issuers to avail themselves of the benefits of a primary shelf registration statement, we do not understand the benefits of excluding Rule 144A offerings and registered exchange offers from consideration in meeting the issuance threshold.

The rationales offered by the Release for excluding 144A offerings and registered exchange offers is that they are not "carried out under the Securities Act's disclosure or liability standards" and that purchasers may not be able to avail themselves of the same remedies as purchasers in a registered offering for cash. With respect to the disclosure standards, we would note that while the specific requirements of Regulation S-K may be inapplicable in a Rule 144A offering, as a practical matter, the disclosure in Rule 144A offerings is typically substantially identical to that which would be required in a registered offering for

cash. As for liabilities and remedies, we agree that there are differences between registered and unregistered offerings, but fail to see how that distinction is relevant in determining whether an issuer is widely followed or whether its disclosure is scrutinized. Investors increasingly view the 144A and public markets as interchangeable, as evidenced by the near elimination of any pricing differential between the two markets. Investors follow issuers and scrutinize their filings without regard to whether the notes they hold were or were not registered under the Securities Act.

Finally, we do not share the Staff's concern that the inclusion of requirements related to securities ratings in its rules and forms places an "official seal of approval" on ratings that could adversely affect the quality of diligence and investment analysis. We respectfully submit that most investors and underwriters do not focus on which of the eligibility criteria an issuer may have satisfied to be entitled to use a shelf registration statement. In addition, we doubt that most investors are even aware of whether an offering is done on a delayed basis using a shelf registration statement or not. Most importantly, we believe that the level of diligence and investment analysis is unaffected by whether an issuer is entitled to use a primary shelf registration statement because it meets the investment grade eligibility criterion or a different eligibility criterion. The critical distinction is that without being able to avail itself of a shelf registration statement, the issuer is faced with the timing uncertainty associated with a potential Commission review and therefore will be strongly incentivized to pursue an unregistered alternative.

As noted in the Release, "most of the problems in the market have occurred with respect to asset-backed securities". We are concerned that in remedying these issues, there are unintended consequences for the general investment grade non-convertible debt market that outweigh the benefits. While we would welcome the addition of an issuance based standard to Form S-3 (that takes into account unregistered offerings as well as registered), we recommend, at a minimum, keeping the investment grade based eligibility criteria for non asset backed transactions.

We appreciate the opportunity to comment on the Proposed Amendments. We would be happy to discuss our comments or any questions the Commission or its staff may have with respect thereto. Please do not hesitate to contact Richard D. Truesdell, Jr. at 212-450-4674 if you would like to discuss these matters.

Very truly yours,



Davis Polk & Wardwell