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April 5, 2004

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

Re: Proposed Rules Regarding Mandated Electronic Filing of Form ID
(File No. S7-14-04)

Dear Mr. Katz:

We are pleased to respond to Release Nos. 33-8399, 34-49416, 35-27815, 39-2416 and IC-26385 (the "Release"), in which the Securities and Exchange Commission (the "Commission") solicited comments on proposed rules regarding mandated electronic filing of Form ID. We support the Commission's initiative to establish a completely electronic database for each EDGAR filer, but we believe the proposed rule amendments, by requiring notarization of the confirming paper filing, introduce unnecessary complexities and burdens to the application process.

The proposed amendment to Rule 10(b) of Regulation S-T includes a requirement that applicants submit a notarized authentication by fax within two business days of filing Form ID. This requirement is inconsistent with the Commission's authentication requirements for most other filings, where no notarization is necessary, and with the Commission's past practices with respect to Form ID filings. For example, during the many years that registration statements were required to be filed in paper form under the Securities Act of 1933, no notarization of the signatures on the signature page has ever been required, and many documents were accepted for filing under the Securities Exchange Act of 1934 (the "Exchange Act") without any signature at all. We believe there is no reasonable basis to require that a Form ID be notarized. The direct and indirect costs involved would outweigh any incremental benefit provided by this requirement.

The proposed rules create an additional administrative burden. If no notary is present in the applicant's office, the signatory will have to expend time traveling to and from a notary's office and waiting for service. The form must be signed by a duly

authorized person of the applicant company or the applicant (in the case of an individual), and we believe that the time of the signatory would be put to better use focusing on the company's operations.

In addition, the proposed rules do not take into account that the notarization requirement will be even more burdensome to non-U.S. applicants. This is of particular importance now that non-U.S. registrants are subject to mandatory EDGAR filing. Notarization by a "notary public" is an American process, and for applicants located outside the U.S. it is typically available only in cities where there is a U.S. embassy or consulate. Even if the non-U.S. applicant is located in such a city, the process of visiting the embassy or consulate office will necessarily involve inconvenience and delay.

If the Commission intends "notarization" to include foreign law signature authentication procedures, we would suggest this be made clear by indicating that, for non-U.S. applicants, any form of third-party certification or authentication procedure accepted in the foreign jurisdiction for submission of documents to a government institution will be acceptable, without translation. We would also suggest that the Commission make clear what type of "notarization" is required for non-U.S. applicants. In Germany, for example, a German *Notar*, who is a trained legal professional active in conveyancing, domestic affairs, corporate and estates work, can both verify the identity of the signatory (a *Beglaubigung*) and examine the content of the documents (a *Beurkundung*).

We would also point out that these procedures are typically more cumbersome and more expensive than notarization in the U.S. For instance, in Germany, a signature authentication would typically be provided by a *Notar*, and in France, either a *notaire* (whose functions are similar to a German *Notar*) or a representative of a municipality would typically authenticate a signature. In both France and Germany, the declarant would typically have to travel to the offices of the person authenticating the signature and pay a service fee that is significantly more than the usually nominal service fees charged in the U.S. Moreover, if it is not specified that procedures sufficient for home country use are adequate, we believe that there may be a question as to whether the certifications performed by the persons mentioned above would require additional authentication by a specific administrative body (such as a court or a ministry).

We also believe that the notarization requirement is unnecessary in light of the penalties already provided for under the federal securities laws for false or misleading statements. For example, in the case of an individual who becomes a director of a public company and therefore becomes subject to reporting under Section 16 of the Exchange Act, Form ID appears to us to be an "application . . . required to be filed" within the meaning of Section 32 of the Exchange Act. Thus, such an individual is potentially subject to criminal penalties if he or she willfully and knowingly makes or causes to be

made any false or misleading statement with respect to a material fact in Form ID. A statement to this effect in the proximity of the signature block on Form ID, as is proposed in the Release, will have a more compelling effect in deterring any contemplated fraud than will the proposed notarization requirement.

We also would like to comment on the proposal that changes and corrections to information in Form ID be made electronically. The Release indicates that Form ID will in the future be used only for an initial application for EDGAR codes and that subsequent corrections and updates will be made through the EDGAR Filer or EDGAR Online Forms website. While we agree that it is desirable for subsequent changes to be made electronically, we anticipate that there will be situations involving lost or expired access codes where this will not be possible, and we recommend that the Commission establish procedures to address these situations. For example, we are at times asked to transmit filings on behalf of clients who are unable to locate their CCCs. Or a filer, having completed a transmission, may wish to change its CCC but finds that its password has expired and is unable to locate its PMAC. Currently, replacement codes are issued in circumstances like these upon filing of an amended Form ID. If Form ID will no longer be available for this purpose, the Commission should establish an alternative procedure, because electronic access will be precluded. Although such circumstances are in our experience relatively infrequent, they tend to arise with short notice in time-sensitive filings.

We suggest that the notarization requirement be eliminated for the reasons stated above. If the Commission believes there is a justification for imposing a notarization requirement despite the burdens it would create for domestic applicants, we suggest that the two-day period be extended to afford applicants sufficient time to make notarization practical and that the requirement be eliminated for non-U.S. applicants. If the requirement is not eliminated for non-U.S. applicants, we suggest that the Commission make clear that "notarization" is limited to verifying the signature and identity of the signatory and that any method sufficient to authenticate a signature in the home jurisdiction should be sufficient. Finally, we suggest that the Commission establishes procedures to address situations where filers are unable to locate their CCCs or where a filer's password has expired and it is unable to locate its PMAC.

Mr. Jonathan G. Katz

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We appreciate the opportunity to comment to the Commission on the proposed rules, and would be happy to discuss any questions the Commission may have with respect to this letter. Any questions about this letter may be directed to Frederick Wertheim (212-558-4974).

Very truly yours,

SULLIVAN & CROMWELL LLP