CLEARY GOTTLIEB STEEN & HAMILTON LLP

ONE LIBERTY PLAZA
NEW YORK, NY 10006-1470
(212) 225-2000
FACSIMILE (212) 225-3999
WWW.CLEARYGOTTLIEB.COM

WASHINGTON, DC • PARIS • BRUSSELS
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April 21, 2009

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: IFRS "Roadmap" – File No. S7-27-08

Dear Ms. Murphy:

We are submitting this letter in response to Release No. 33-9005; 34-59350; File No. S7-27-08 (the "Release"), on the potential use of financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") by U.S. issuers. The Release has two elements, which we discuss separately below: a proposed "roadmap" towards IFRS reporting by all U.S. issuers (the "Roadmap") and proposed amendments to the Commission's rules that would permit some U.S. issuers to elect to report using IFRS (the "Elective Proposal").

The development of a single set of high-quality, global accounting standards is an important public policy objective. Recently, the April 2009 meeting of the G-20 governments agreed to "call on accounting standard setters to work urgently with supervisors and regulators to … achieve a single set of high-quality global accounting standards."[1] It is the Commission's responsibility to address this goal.

IFRS represents the only plausible opportunity to achieve a single, global set of accounting standards, because outside the United States, IFRS is well on its way to becoming the predominant global set of accounting standards. But if the Commission does not embrace that opportunity, the spread of IFRS also presents a serious long-term risk: a world with two parallel financial accounting systems for public securities. The U.S. GAAP system would apply to U.S.

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[1] See G-20 Leaders Statement: The Global Plan for Recovery and Reform, London, April 2, 2009, available at http://www.g20.org/Documents/final-communique.pdf.

issuers. The IFRS system would apply to all other issuers (including in the U.S. public market[2]) and to every other securities market in the world (including the private markets in the United States[3]).

This outcome would be contrary to the objective announced by the G-20, and it would also be contrary to the interests of U.S. investors and of the Commission. The U.S. GAAP system would eventually be marginalized, and with it the importance of the U.S. public markets and the influence of the Commission itself. U.S. investors already rely on IFRS financial statements, and they will do so increasingly as more countries adopt IFRS and as investment continues to become more global. But in a world of parallel accounting systems, the Commission and other U.S. regulators, and the interests of U.S. investors and U.S.-based companies, would play a small and diminishing role in IFRS standard-setting, interpretation and application.

Instead, the Commission should make a high priority of fostering both the global adoption of IFRS and the continuing improvement of the quality of IFRS, and it should ensure that U.S investors and U.S.-based issuers become important constituents in the development of IFRS. For this purpose, a roadmap toward the mandatory adoption of IFRS by all U.S. issuers is not necessary at this time. We urge the Commission to adopt the approach described below.

- **Defer for future consideration the mandatory adoption of IFRS for U.S. issuers.**

It is premature for the Commission to consider requiring any U.S. issuer to adopt IFRS. The very concept of the Roadmap recognizes this, by postponing the decision. Proposing the Roadmap was very useful: it identified criteria for moving to mandatory use of IFRS, it identified implementation issues, and it started an important process in which issuers, auditors, investors and the public are considering the challenge of how best to pursue the goal of a single, global set of high-quality accounting standards.

However, the Roadmap has also aroused serious opposition. Much of it relates to considerations that are fundamental to a mandatory transition – timing and cost, especially, but also regulatory, tax and contractual issues. (A rule permitting elective transition to IFRS leaves these problems for electing issuers to resolve.) The Commission should seek to foster a broad consensus on transition to IFRS, and at the moment there is no specific timetable or specific set of criteria that will command a consensus. Accordingly we recommend that the Commission not take further action at this time on the Roadmap.

- **Pursue the improvement of IFRS through convergence and institutional reform.**

Among the matters the Release calls “milestones” are three objectives that the Commission should continue to promote. First, the Commission should encourage the further convergence of U.S. GAAP and IFRS. Although it is now clear that convergence will not lead to

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2 The Commission’s rules permit a reporting foreign private issuer to report under IFRS without a reconciliation to U.S. GAAP, and it is likely that within a few years the vast majority of reporting foreign private issuers will be doing so as their home jurisdictions adopt IFRS.

3 Without any U.S. GAAP financial information, securities can be sold in the United States in transactions exempt from Securities Act registration under Rule 144A, and securities of a foreign private issuer can trade in the United States without Exchange Act registration pursuant to Rule 12g3-2(b).

congruence, it still serves to improve the quality of both sets of accounting standards. It also promotes comparability of financial reporting between IFRS issuers and U.S. GAAP issuers, which as the Release emphasizes is of great benefit to investors. And by reducing differences, convergence facilitates the transition to IFRS for an issuer and the acceptance of the transition by investors.

Second, the Commission should continue to promote and support the development of the IASC Foundation. We agree strongly with the Roadmap's emphasis on strengthening the institutional independence of the IASC Foundation and developing a secure, stable funding mechanism.

Third, the Commission should address publicly how it intends to coordinate with international regulators as it supervises the application of IFRS by U.S. issuers. Given the importance of the U.S. market globally, the Commission's interpretations and comment letters will carry significant influence worldwide. As a matter of international comity, it will be important for the Commission to make clear its intention to coordinate with other regulators, as part of its commitment to promoting IFRS as a uniform, global accounting standard.

Finally, some of the issues raised by the Release clearly warrant further study, and in some cases action, by the Commission staff and market participants. We endorse the announcement in Part III.A.6 of the Release that the Commission directs the staff to undertake a study and report on the implications of the implementation of IFRS for U.S. issuers. The Commission should specify a date in the near future for completion of this study and report. The study should cover the implementation issues raised in the Release under the headings "milestones" (Part III.A) and "other areas of consideration" (Part III.B).

- **Re-propose a rule permitting eligible U.S. issuers to elect to use IFRS rather than U.S. GAAP.**

The comment letters on the Release demonstrate that there are U.S. issuers that will report using IFRS if the Commission changes its rules to accommodate that. For the reasons discussed above, the Commission should be encouraging this. The Elective Proposal, however, includes a number of features that would discourage U.S. issuers from using IFRS. We believe the Commission should promptly re-propose rule amendments that would encourage elective transition, particularly in the following ways:

<u>*Companies that adopt IFRS should not be viewed as participating in an experiment*</u>. The Commission apparently intends the Elective Proposal as a test of whether it should move further towards requiring IFRS, and the Release states that in the future "the Commission would determine whether to require U.S. issuers that had elected the early use of IFRS to revert back to U.S. GAAP." This prospect will deter issuers from electing IFRS, and we believe it is unnecessary. Of course, any rule can be amended, but the Commission's rules permitting an eligible U.S. issuer to report under IFRS should be intended as permanent, just like the rules permitting a foreign private issuer to report under IFRS.

<u>*The Commission should not require supplemental U.S. GAAP information*</u>. The transition provisions of IFRS 1 provide sufficient information on the impact of changing from U.S. GAAP to IFRS. A continuing requirement to provide supplemental U.S. GAAP information

("Proposal B" in Part IV.D of the Release) is not justified, and it would be a strong deterrent to electing IFRS.

Eligibility should be much broader. The Elective Proposal's eligibility criteria are based on identifying issuers for which the use of IFRS would promote comparability with competitors in the same industry. We do not see the value of limiting the availability of IFRS in this way. The emphasis on comparability appears to arise from the Commission's conception that the Elective Proposal is part of an experiment. As discussed above, we disagree, but in any case the goal of comparability requires a substantial population of IFRS filers. Accordingly, we suggest that an issuer be permitted to switch to IFRS if it is a well-known seasoned issuer as defined in Rule 405 under the Securities Act of 1933 at the beginning of the first fiscal year for which it would present IFRS financial statements. This would also permit the Commission to eliminate the procedure under the Proposal by which an issuer must seek a staff letter of no objection, which is cumbersome and unnecessary.

Two years of IFRS should be sufficient in the first year. The transition process for a company that elects to use IFRS will be complex and costly. Based on our experience with European issuers, reconstructing past data as part of the transition is difficult or, in some cases, impossible. As a result, many issuers will find themselves unable to produce three years of IFRS financial information until three years after they begin the transition process. The Commission should permit the use of two years of IFRS financial statements in the first year of IFRS reporting. The IFRS 1 reconciliation of the earlier year from U.S. GAAP should be sufficient (together with appropriate MD&A disclosure) to permit investors to understand the trends that the presentation of three years of financial information is ordinarily intended to show.

We appreciate the opportunity to participate in this process, and we look forward to its successful conclusion. Inquiries may be directed to any of Alan L. Beller, Andrew A. Bernstein, Nicolas Grabar, Edward F. Greene and Leslie N. Silverman.

Very truly yours,

CLEARY GOTTLIEB STEEN & HAMILTON LLP

cc: The Honorable Mary L. Schapiro, *Chairman*
The Honorable Kathleen L. Casey, *Commissioner*
The Honorable Elisse B. Walter, *Commissioner*
The Honorable Luis A. Aguilar, *Commissioner*
The Honorable Troy A. Paredes, *Commissioner*

Meredith B. Cross, *Director, Division of Corporation Finance*