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

Re: File No. S7-22-10 Short-Term Borrowings Disclosure

Dear Ms. Murphy:

The Center for Audit Quality (CAQ) is an autonomous public policy organization dedicated to enhancing investor confidence and public trust in the global capital markets. The CAQ fosters high quality performance by public company auditors, convenes and collaborates with other stakeholders to advance the discussion of critical issues requiring action and intervention, and advocates policies and standards that promote public company auditors' objectivity, effectiveness and responsiveness to dynamic market conditions. Based in Washington, D.C., the CAQ is affiliated with the American Institute of Certified Public Accountants (AICPA). The CAQ appreciates the opportunity to respond to the Securities and Exchange Commission's (SEC or Commission) Proposed Rule, *Short-Term Borrowings Disclosure* (the Proposal or the Proposed Rule). This letter represents the observations of the CAQ, but not necessarily the views of any specific firm, individual or CAQ Governing Board member.

OVERALL COMMENT

We support the efforts of the Commission to promote high quality, transparent disclosure about registrants' liquidity and capital resources. We also support the recent guidance published by the Commission to address these issues, specifically the Interpretive Release on the *Presentation of Liquidity and Capital Resources Disclosures in Management's Discussion and Analysis (MD&A)*. The interpretive release together with adherence to the underlying principles and objectives of Item 303 of Regulation S-K (MD&A) will, we believe, support the Commission's goal of improving the discussion of liquidity and capital resources in MD&A.

We note that in the Proposed Rule the Commission seeks input regarding the usefulness of the disclosure to investors and the difficulties and costs for

registrants to prepare the information called for in the Proposed Rule. We encourage the Commission to focus on input regarding the Proposed Rule from investors and registrants on these issues. Specifically, we encourage the Commission to consider comments on the usefulness of the proposed disclosures to investors and the associated costs to registrants for providing information required by the Proposal. In particular, this consideration should focus on those registrants that had not been previously subject, directly or indirectly, to Industry Guide 3, *Statistical Disclosure By Bank Holding Companies*, ("Guide 3") disclosures, including foreign private issuers, smaller reporting companies and other registrants that would meet the proposed definition of a financial company, but that do not meet the definition of a bank holding company or have material amounts of lending and deposit activities.

SPECIFIC COMMENTS

If the Commission decides to go forward with adopting a final rule, we recommend that the Commission consider the following observations relating to specific aspects of the Proposal. We have organized these observations around the following topical areas:

- General MD&A Disclosures
- Reporting Periods
- Transition Issues

GENERAL MD&A DISCLOSURES

We encourage the Commission to consider providing additional guidance and clarity around the definition of short-term borrowings subject to the proposed disclosures. Based on the discussion in the Background and Summary section of the Proposed Rule, the scope of the Commission's concerns around liquidity disclosures appears to apply to a broader array of financing arrangements than only those meeting the historical definition of the term "short-term borrowings" for financial statement presentation purposes. We note the following items for which clarification may be useful because it is unclear whether the proposed definition would capture this activity.

- Contractual short term obligations presented as long-term (non-current) liabilities if a registrant intends to, and has the ability to, refinance the obligations on a long-term basis.
- Long-term financing arrangements, such as lines of credit and term loan facilities, that registrants reflect as non-current, where frequent borrowings and repayments are made for operational reasons, but where the registrant is not contractually obligated to repay the borrowings within one year. In many such cases, the registrant has both the ability and intent, as well as an historical practice, of using such arrangements in a manner very similar to a traditional short-term borrowing arrangement.
- Registrants that present an unclassified balance sheet.
- Items to be included within the proposed category "any other short-term borrowings reflected on the registrant's balance sheet." This category is based upon the balance sheet line item "other short-term borrowings" pursuant to Regulation S-X, Article 9-03.13(3). For entities

that do not follow Article 9, it may be unclear what amounts reflected on the balance sheet should fall within this category, as the Proposed Rule does not provide a specific definition.

- Whether the proposed category “federal funds purchased and securities sold under agreements to repurchase” intends to capture similar economic transactions, such as securities lending transactions, within this category, a different category, or at all. For example, securities lending transactions are economically similar to repurchase transactions, however they are not typically grouped in the balance sheet with other short-term borrowings or included in Guide 3 disclosures.

The Proposed Rule indicates that a registrant should consider disaggregating the specified categories of short-term borrowings when providing the disclosures. It cites examples of when a registrant may want to disaggregate, such as when there are large variations in interest rates, when foreign currency differences exist, such as foreign and U.S. dollar-denominated borrowings, and when differences in the level of collateralization exist (e.g., potentially bifurcating agreements between those that are collateralized by U.S. treasuries from those that are collateralized by other assets). We encourage the Commission to provide further clarity on disaggregation considering, for example, the following items:

- Whether a registrant that discloses more than one reportable segment in its financial statements should also consider disclosing short-term borrowings by segment in accordance with Regulation S-K, Item 303(a).
- Whether a registrant that consolidates one or more variable interest entities (VIEs) should consider disaggregating short-term borrowings related to the VIE, separate and apart from short-term borrowings related to the registrant and its consolidated voting interest entities.

In the Proposed Rule, the Commission also seeks comment regarding the scope of the proposed disclosures. We note that Guide 3 includes a provision allowing bank holding companies to disclose average balance information on a weekly or monthly basis, when collecting daily information “would involve unwarranted or undue burden or expense...provided such averages are representative of the operations of the registrant.” We encourage the Commission to carefully consider comments submitted by registrants about the cost and effort to comply with the proposed requirements and consider whether a practicability provision, similar to the provision now included in Guide 3, should be provided to all registrants.

REPORTING PERIODS

Domestic Registrants

We recommend that the final rule clarify the periods for which interim short-term borrowings information needs to be presented in Form 10-Q and registration statements.

Form 10-Q

Based on the commentary in the Proposal, we understand that in a Form 10-Q the short-term borrowings disclosure under proposed Item 303(a) (6) of Regulation S-K would be required to be provided only for the most recent quarter of the current year (for smaller reporting companies the interim period disclosures only would be required if any material changes have occurred). For example, in a third quarter Form 10-Q, the disclosure would be required only for the third quarter of the current year. No year-to-date disclosure would be required, and no disclosure would be required for the comparable period of the prior year (notwithstanding the fact that current and prior year year-to-date financial statements and discussions of operating results are presented, and prior year third quarter financial statements are presented and covered in the discussion of the third quarter operating results for the current year).

Proposed instruction 8 to Paragraph 303(b) states:

Notwithstanding anything to the contrary in this Item 303, a registrant that is not a smaller reporting company must include the disclosure required pursuant to (a)(6) of this Item for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X, and for the registrant's fourth fiscal quarter in the case of an annual report filed on Form 10-K, and must provide an updated discussion and analysis of the information presented. For purposes of interim period disclosures ... the term "reported period" used in paragraph (a)(6) of this Item means the most recent interim period presented or, in the case of an annual report filed on Form 10-K (referenced in §249.310), the registrant's fourth fiscal quarter.

We have two comments about the clarity of this instruction:

- First, for a filing other than a Form 10-K, the instruction calls for disclosure "for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X" (emphasis added). The financial statement requirements for Form 10-Q are located in Article 10 of Regulation S-X (not Article 3), therefore it is unclear from the instruction whether the disclosure is required in a Form 10-Q.
- Second, the instruction calls for disclosure for the "most recent interim period presented." A Form 10-Q presents financial statements for two interim periods that both end on the same date (the most recent quarter and the year-to-date period), so it's unclear from this instruction whether the interim period for which the short-term borrowings disclosure is required is the most recent fiscal quarter.

Registration Statements

We have three comments about the clarity of proposed instruction 8 quoted above as it applies to registration statements:

- First, while it's clear that a registration statement would be required to include the interim period short-term borrowings disclosure under proposed Item 303(a)(6) of Regulation S-K, it is unclear whether the disclosure would be required to be provided for (a) the current year

year-to-date period or (b) each quarter of the current year. For example, if a Form S-1 presents annual financial statements for the years ended December 31, 2009, 2010 and 2011 and year-to-date financial statements for the nine months ended September 30, 2011 and 2012, would the short-term borrowings disclosure be required to be provided for (a) the nine-month period ended September 30, 2012 or (b) the quarters ended March 31, 2012, June 30, 2012 and September 30, 2012? Instruction 8 calls for disclosure “for each interim period for which financial statements are included or required to be included by Article 3 of Regulation S-X.” In the example above, the only interim financial statements required to be included by Article 3 of Regulation S-X cover nine-month periods, and the “most recent interim period presented” is a nine-month period, so the “reported period” seems to be a nine-month period. Therefore, Instruction 8 seems to require the short-term borrowings disclosure for only the nine-month period ended September 30, 2012. However, the references in the Proposal to “quarterly” information and question 20 asking whether the Commission should require year-to-date information in addition to quarterly information suggest that the proposed text of the Instruction does not read as intended. Therefore, if the Commission’s intent is for short-term borrowings disclosure to be provided in a registration statement for each of the quarters within the current year year-to-date period, we suggest the Commission revise instruction 8 to make this clear.

- Second, if the Commission’s intent is for short-term borrowings disclosure to be provided for each of the quarters within the current year year-to-date period, we suggest the Commission consider whether this is appropriate in initial registration statements. Repeat issuers subject to Item 302(a) of Regulation S-K provide quarterly financial data in their registration statements, and all repeat issuers file quarterly reports on Form 10-Q. These disclosures would provide context for evaluating quarterly short-term borrowings information in their registration statements. In contrast, initial registration statements require only year-to-date interim financial statements and do not provide investors with such context. Therefore, perhaps providing only year-to-date short-term borrowings information would be more appropriate in initial registration statements.
- Third, there may be confusion regarding what interim period short-term borrowings disclosure, if any, is required in a registration statement that does not contain interim financial statements. For example, a registrant with a December year-end files a Form S-1 in April 2013, shortly after it files its Form 10-K for the year ended December 31, 2012. The Form S-1 does not incorporate by reference the 2012 Form 10-K. It presents annual financial statements for the years ended December 31, 2010, 2011 and 2012 and no interim financial statements. Is that registrant allowed to omit from the Form S-1 the short-term borrowings disclosure for the fourth quarter of 2012 that was presented in the 2012 Form 10-K? Since the filing is not a Form 10-K and no interim financial statements are required by Article 3 of Regulation S-X, the proposed text of instruction 8 suggests that the disclosure for the fourth quarter of 2012 can be omitted. If that is the Commission’s intent, it would be helpful to provide commentary in the adopting release to clarify this. If not, then we suggest the Commission revise instruction 8 to clarify its expectations.

Foreign Private Issuers

We recommend that the Commission more clearly specify the periods for which interim short-term borrowings information needs to be presented in registration statements of foreign private issuers.

Based on the commentary in the Proposal, the Commission seems to expect a foreign private issuer to provide interim short-term borrowings disclosures in a registration statement if the registration statement includes interim financial statements. For example, the Proposal states:

Foreign private issuers preparing registration statements with audited full-year financial statements would be required to include short-term borrowings disclosure for the three most recent full fiscal year periods and quarterly information for any subsequent interim periods included in the registration statement in accordance with the requirements of the relevant registration statement form.

Thus, unless a foreign private issuer ... files a Securities Act registration statement that must include interim period financial statements and related MD&A-equivalent disclosure, [footnote reference omitted] it would not be required to update its disclosure under proposed Item 5.H of Form 20-F more than annually.

In contrast, proposed Item 5.H.5 of Form 20-F states:

Information required by this Item 5.H shall be presented for each of the three most recent fiscal years.

Therefore, we have two comments about the clarity of proposed Item 5.H.5:

- While the Proposal states that a foreign private issuer would be required to provide interim short-term borrowings disclosures in a registration statement if the registration statement includes interim financial statements, proposed Item 5.H.5 does not communicate this. If interim short-term borrowings information is required in registration statements including interim financial statements, but not in annual reports on Form 20-F that include only annual financial statements, we suggest the Commission revise proposed Item 5.H.5 to make this clear.
- If foreign private issuers must provide interim short-term borrowings disclosures in a registration statement that includes interim financial statements, the period or periods for which such information is required should be made clear. For example, if a foreign private issuer with a December year-end files a Form F-1 during the fourth quarter of 2012, it would be required to present annual financial statements for the years ended December 31, 2009, 2010 and 2011 and year-to-date financial statements for the six months ended June 30, 2011 and 2012. Since foreign private issuers generally update their financial statements in registration statements every six months (not every quarter), the reference on page 39 of the Proposal to “quarterly information for any subsequent interim periods included in the registration statement” is not clear. Would the foreign private issuer in this example need to provide interim disclosure for (a) the quarters ended March 31, 2012 and June 30, 2012 or (b) the six months ended June 30, 2012?

TRANSITION ISSUES

If the Commission decides to go forward with adopting a final rule, in concluding on the effective date and transition, we recommend that the Commission specify in which periodic filing registrants

would first be required to include the disclosures. For example, would the new disclosures first apply to a registrant's quarterly report or annual report filing, and would transition be based on either the first such fiscal period ending, or the first such periodic report due, after the effective date? Also, if the new disclosures would be effective for any period other than the first quarterly period in a registrant's fiscal year, we recommend that the Commission clarify that the disclosures would not be required for any of the previous quarters of that fiscal year. Furthermore, we recommend that the Commission clarify the transition with respect to annual periods included in an initial registration statement. For example, would an initial registration statement be required to include the new annual disclosures about short-term borrowings based only on the most recent annual financial statements included at the time of effectiveness, or would the disclosures also be required for the most recent annual financial statements included at the time of filing?

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We appreciate the opportunity to comment on the Proposal and would welcome the opportunity to respond to any questions you may have regarding any of our comments and recommendations.

Sincerely,



Cynthia M. Fornelli
Executive Director
Center for Audit Quality

cc: SEC
Chairman Mary Schapiro
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