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Securities Exchange Act of 1934  
Rules 14e-1(a) and (b)

January [ ], 2015

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Mergers and Acquisitions  
100 F Street, N.E.  
Washington, DC 20549

Attention: Ms. Michele Anderson, Chief  
Mr. David Orlic, Special Counsel  
Mr. Dan Duchovny, Special Counsel

Dear Ms. Anderson and Messrs. Orlic and Duchovny:

We hereby request<sup>1</sup> that the staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) confirm that it will not recommend any enforcement action to the Commission if an offeror were to (i) conduct a tender offer for non-convertible debt securities and hold the tender offer open for at least five business days (as that term is defined in the Commission’s rules and as further described in footnote 11) from and including the date the tender offer is first published by means of Immediate Widespread Dissemination (as defined below), so long as such tender offer satisfies the applicable criteria described below (any such offer being referred to herein as a “Five Business Day Tender Offer”); (ii) hold open a Five Business Day Tender Offer for at least five business days from and including the date of the announcement of any change in the consideration offered notwithstanding Rule 14e-1(b) and (iii) hold open a Five Business Day Tender Offer for at least three business days from and including the date of the announcement of any material change in the offer other than a change in the consideration offered.

The criteria applicable to a Five Business Day Tender Offer are that the offer would:

- be made for a class or series of non-convertible debt securities<sup>2</sup>, regardless of any particular rating assigned thereto by any nationally recognized statistical rating or-

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<sup>1</sup> The undersigned regularly represent a diverse group of issuers, dealer managers and investors in connection with debt tender offers. We believe the no-action relief requested herein reflects a broad consensus for appropriate relief and enjoys broad support among groups with diverse interests.

<sup>2</sup> Separate offers may be made for more than one class or series of debt securities as part of the same offer to purchase document.

ganization, as such term is defined in Section 3(a)(62) of the Securities Exchange Act of 1934, as amended, (the “Exchange Act”);

- be made by the issuer of the subject debt securities, or a direct or indirect wholly owned subsidiary of such issuer or a parent company that directly or indirectly owns 100% of the capital stock (other than directors’ qualifying shares) of such issuer;
- be made solely for cash consideration and/or consideration consisting of Qualified Debt Securities<sup>3</sup>, for any and all of such debt securities;
- be open to all record and beneficial holders of such debt securities; *provided* that exchange offers in which Qualified Debt Securities are offered would be restricted to Qualified Institutional Buyers (as defined in Rule 144A under the Securities Act of 1933, as amended (the “Securities Act”)) and/or non-U.S. persons (within the meaning of Regulation S under the Securities Act) (collectively, “Eligible Exchange Offer Participants”) in a transaction exempt from the registration requirements of the Securities Act; *provided, further*, that, holders who are not Eligible Exchange Offer Participants (or an affiliate thereof) would be given an option concurrent with such offer (which can be part of the same offer to purchase document) to receive cash (from either the offeror or a dealer manager) for such holders’ debt securities in a fixed amount determined by the offeror, in its reasonable judgment, to approximate the value of the Qualified Debt Securities being offered and such an amount is set forth at the commencement of the offer<sup>4</sup>;

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<sup>3</sup> The consideration offered may be a fixed amount of cash (and/or Qualified Debt Securities) or an amount of cash (and/or Qualified Debt Securities) based on a fixed spread to a benchmark and, in the case of Qualified Debt Securities, the coupon may be based on a spread to a benchmark. A “benchmark” includes U.S. Treasury Rates, LIBOR, swap rates and, in the case of securities denominated in currencies other than US dollars, sovereign securities or swap rates denominated in the same currency as the securities subject to the offer, in each case that are readily available on a Bloomberg or similar trading screen or quotation service. The spread used for determining the amount of consideration offered will be announced at the commencement of the tender offer. In the case of an offer of Qualified Debt Securities, if the interest rate or the spread used for determining the interest rate for such securities is not fixed and announced at the commencement of the offer, it will be announced at the commencement of the offer as a range of not more than 50 basis points, with the final interest rate or spread to be announced by 9:00 a.m., Eastern time, on the business day prior to the expiration of the offer. The exact amount of consideration and the interest rate (in the case of amounts or interest rate based on fixed spreads to a benchmark) on any Qualified Debt Securities will be fixed no later than 2:00 p.m., Eastern time, on the last business day of the offer. In addition, in the case of an offer of Qualified Debt Securities, a minimum acceptance amount would be announced at the commencement of the offer. “Qualified Debt Securities” means non-convertible debt securities that are identical in all material respects (including but not limited to the issuer(s), guarantor(s), collateral, lien priority, covenants and other terms) to the debt securities that are the subject of the tender offer except for the maturity date, interest payment and record dates, redemption provisions and interest rate; *provided* that Qualified Debt Securities must have (i) all interest payable only in cash and (ii) a weighted average life to maturity that is longer than the debt securities that are the subject of the offer.

<sup>4</sup> In order to limit the amount of cash that an offeror (or a dealer manager) may have to pay to holders who are not Eligible Exchange Offer Participants (or their affiliates), an offeror may decide to include a condition precedent to its offer that no more than a specified maximum amount of cash would be required to be paid in the offer or else both the cash offer and concurrent exchange offer would terminate.

- not be made in connection with a solicitation of consents to amend the indenture, form of security or note or other agreement governing the subject debt securities (collectively, the “Indenture”);
- not be made if a default or event of default exists under the Indenture or any other indenture or material credit agreement to which the issuer is a party;
- not be made if at the time of the offer the issuer is the subject of bankruptcy or insolvency proceedings or has commenced a solicitation of consents for a “pre-packaged” bankruptcy proceeding or if the board of directors of the issuer has authorized discussions with creditors of the issuer to effect a consensual restructuring of the issuer’s outstanding indebtedness;
- not be financed with the proceeds of any Senior Indebtedness<sup>5</sup>;
- permit tenders prior to the expiration of the offer through a guaranteed delivery procedure by means of a certification by or on behalf of a holder that such holder is tendering securities beneficially owned by it and that the delivery of such securities will be made no later than the close of business on the second business day after the expiration of the offer;
- be announced via a press release through a widely disseminated news or wire service disclosing the basic terms of the offer (including the identity of the offeror, the class of securities sought to be purchased, the type and amount of consideration being offered and the expiration date of the offer), and containing an active hyperlink to, or an Internet address at which a record or beneficial holder could then obtain, copies of the offer to purchase and letter of transmittal (if any) and other instructions or documents (including a form of guaranteed delivery instructions) relating to the tender of such debt securities (collectively, “Immediate Widespread Dissemination”), in each case at or prior to 10:00 a.m., Eastern time, on the first business day of such five business day period<sup>6</sup>;
- if the issuer or the offeror is a reporting company under the Exchange Act (including “voluntary filers”), furnish the press release announcing the offer in a Current Report on Form 8-K filed with the Commission prior to 12:00 noon, Eastern time, on the first business day of the offer;

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<sup>5</sup> “Senior Indebtedness” means indebtedness that is incurred to finance all or a portion of the consideration in the Five Business Day Tender Offer (excluding indebtedness or borrowings under any credit or debt facility existing prior to the commencement of the offer) if such indebtedness (i) has obligors, guarantors or collateral (or a higher priority with respect to collateral) that the subject debt securities do not have; (ii) has a weighted average life to maturity less than that of the subject debt securities; or (iii) is otherwise senior in right of payment to the subject debt securities.

<sup>6</sup> In addition to Immediate Widespread Dissemination, the offeror in any debt tender offer also would (i) use commercially reasonable efforts to send via email (or other form of electronic communication) the press release announcing the offer to all investors subscribing to one or more corporate action e-mails or similar lists; (ii) use other customary methods in order to expedite the dissemination of information concerning the tender offer to beneficial holders of the subject debt securities; and (iii) issue a press release promptly after the consummation of the offer setting forth the results of the offer.

- provide for communication by Immediate Widespread Dissemination at least five business days prior to the expiration of the offer of any change in the consideration being offered in the offer and at least three business days prior to expiration of any other material change to the offer, in each case at or prior to 10:00 a.m., Eastern time, on the first day of such five or three business day period, as applicable; and, if the issuer or offeror is a reporting company under the Exchange Act (including a “voluntary filer”), describe any change in the consideration being offered in a Current Report on Form 8-K filed with the Commission prior to 12:00 noon, Eastern time, on the first day of the aforementioned five business day period;
- provide for withdrawal rights that are exercisable (i) at least until the earlier of (x) the expiration date of the offer and (y) in the event that the offer is extended, the tenth business day after commencement of the offer, and (ii) at any time after the 60<sup>th</sup> business day after commencement of the offer if for any reason the offer has not been consummated within 60 business days after commencement;
- provide that the offeror will not pay the consideration in the offer until promptly after expiration of the offer pursuant to Rule 14e-1(c); and
- not be (i) made in anticipation of or in response to, or concurrently with, a change of control or other type of extraordinary transaction by the issuer, such as a merger (or similar business combination), reorganization or liquidation or a sale of substantially all of its consolidated assets; (ii) made in anticipation of or in response to other tender offers for the issuer’s securities; (iii) made concurrently with a tender offer for any other series of the issuer’s securities made by the issuer (or any subsidiary or parent company of the issuer) if the effect of such offer, if consummated (by way of amendment, exchange or otherwise), would be to add obligors, guarantors or collateral (or increase the priority of liens securing such other series) or shorten the weighted average life to maturity of such other series; or (iv) commenced within ten business days after the first public announcement or the consummation of the purchase, sale or transfer by the issuer or any of its subsidiaries of a material business or amount of assets that would require the furnishing of pro forma financial information with respect to such transaction pursuant to Article 11 of Regulation S-X (whether or not the issuer is a registrant under the Exchange Act).

## Discussion

Section 14(e) of the Exchange Act prohibits untrue statements of material fact, omissions of material fact, and fraudulent, deceptive and manipulative acts and practices in connection with tender offers.<sup>7</sup> As a means reasonably designed to prevent these acts and practices, the Commission has promulgated specific rules that are applicable to tender offers in Regulation 14E.<sup>8</sup> Particularly, Rule 14e-1(a) requires a minimum offer period for all tender offers—debt or equity—of 20 business days, in order to afford participants sufficient time to make a decision as to whether or not to tender securities owned by them and Rule 14e-1(b) requires that a tender offer remain open for at least ten business days after any change in the consideration offered.

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<sup>7</sup> 15 U.S.C. § 78n(e) (2012).

<sup>8</sup> Regulation 14E and Rules 14e-1 through 14e-8. 17 C.F.R. §§ 240.14e-1 *et seq.*

Commencing in 1986, the Staff issued a series of no-action letters providing relief from the 20 business day requirement in the context of certain debt tender offers. In particular, the Staff granted no-action relief for issuer tender offers for non-convertible debt securities (later limited to only non-convertible debt securities with an investment grade rating) that are held open for a period of seven to ten calendar days and meet certain other qualifications.<sup>9</sup>

The Staff's existing no-action relief recognizes that debt tender offers may, in certain circumstances, present significantly different timing considerations than those involved in tender offers for equity securities. Debt tender offers frequently involve the refinancing of debt securities with high interest rates with a new issue of debt securities with a lower interest rate, or the refinancing of debt securities that will mature within a relatively short time frame with debt securities with a longer maturity being issued during a period of reasonably favorable market conditions. The ability of an issuer to effect such a refinancing in a relatively short period of time is important to lessen potential exposure to changing market conditions and to avoid having to pay "double interest" or "negative carry"—i.e., interest on the newly issued debt securities and on the outstanding debt securities until they can be purchased in the tender offer. A shortened tender period also is advantageous to the holders of outstanding debt securities who want to reinvest funds received in the tender to purchase a portion of the new issue, thus "rolling over" their investment. Unlike the significant premiums often paid in an equity tender offer, the tender price in a non-convertible debt tender offer is typically either a modest premium over the prevailing market price of the debt securities subject to the offer or a close approximation to the then-applicable redemption price, and the holder does not have to weigh any potential equity upside the holder is being asked to give up in exchange for the premium.<sup>10</sup>

We believe that a number of the factors the Staff has previously recognized and relied on in granting prior no-action letters are equally applicable today to the requested no-action relief and that advancements in technology since 1986 enable investors to react efficiently to debt tender offers in a shorter time frame.

In connection with a Five Business Day Tender Offer, the requested no-action relief would vary from the Staff's existing no-action relief in the following principal respects:

- *Immediate Widespread Dissemination.* The relief requested hereby would be conditioned upon the offeror providing Immediate Widespread Dissemination of offer materials in a manner that we believe has broad investor support. This requirement is designed to be a benefit to investors not imposed by current relief and would further facilitate the ability of record and beneficial holders to make a tender decision within the time period contemplated.
- *Five business days vs. seven to ten calendar days.* The five business day requirement (as defined above) is similar to the seven to ten calendar day period under existing no-action relief.

<sup>9</sup> SEC No-Action Letter, *Goldman, Sachs & Co.* (March 26, 1986); SEC No-Action Letter, *Salomon Brothers Inc.* (March 11, 1986).

<sup>10</sup> The Staff has also previously acknowledged that "because of the modest premiums typically offered in an Issuer Debt Tender Offer, it is not clear that participation in the tender offer by individual non-institutional debtholders would be materially increased by requiring that tender offers be held open for twenty business days." *Salomon Brothers Inc.* (March 11, 1986) at 7. We believe this observation remains accurate. In addition, given modern technology and the widespread use of electronic communications, we believe that individual investors will be better able to respond within the applicable time frame, especially in light of the Immediate Widespread Dissemination requirement.

We believe, based on investor feedback, that using a business day construct is better than a calendar day construct. For example, five business days in almost all cases will require a seven calendar day period.<sup>11</sup> However, seven calendar days over a holiday period may result in the offer being held open for less than five business days. Given the advances in communications technology since 1986, we believe the requested relief, coupled with the requirement of Immediate Widespread Dissemination, places investors in a superior position to where investors were in 1986 before widespread public adoption of the Internet, when there was the potential for greater delay in the distribution of offer materials. Furthermore, in a tender offer that meets the criteria applicable for a Five Business Day Tender Offer, the holder does not have to evaluate the non-economic characteristics of an amended or new security that the holder would own in the case of a tender offer accompanied by a consent solicitation or an exchange offer for new debt securities that are not Qualified Debt Securities. As a result, holders of debt securities in a Five Business Day Tender Offer can make the decision to sell or hold relatively quickly on a purely financial basis—in much the same manner investors make ordinary trading decisions in time periods that are much shorter than five business days. For similar reasons and as part of the proposed Five Business Day Tender Offer construct, the relief requested includes no-action relief if an offeror holds open a Five Business Day Tender Offer for at least five business days after any change in the consideration offered notwithstanding Rule 14e-1(b)'s requirements that a tender offer remain open for ten business days after a change in consideration offered and no-action relief if an offeror holds open a Five Business Day Tender Offer for at least three business days after any material change in the offer other than a change in the consideration offered.

- *Exchange offer of Qualified Debt Securities.* The relief requested would allow for offers to be made with Qualified Debt Securities. The inclusion of this alternative will allow issuers to use a Five Business Day Tender Offer to refinance existing debt securities with either cash proceeds from the issuance of new securities or the issuance of new debt securities directly to the holders of the existing debt securities. Since the Qualified Debt Securities must be identical in all material respects to the existing debt securities sought in the offer, other than maturity, weighted average life to maturity (which may not be less than the debt securities that are the subject of the tender offer), redemption provisions and interest rate (and related payment and record dates), the holder's decision is similar to that made in a cash offer—*i.e.*, is the value offered by the financial terms of the offer a favorable one or not. It is in essence a trading decision.<sup>12</sup> As discussed above, these types of financial trading decisions are made by market participants every day in time periods that are much shorter than the five business days required under a Five Business Day Tender Offer. Investors would be protected because only Eligible Exchange Offer Participants (*i.e.*, qualified institutional buyers under Rule 144A and non-U.S. persons under Regulation S) would be able to participate in the exchange offer. We have been informed that dealer managers and banks have lists or databases that

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<sup>11</sup> For purposes of the requested relief in this letter, a Five Business Day Tender Offer would be treated as having commenced on the first business day on which the tender offer is made if Immediate Widespread Dissemination occurs at or prior to 10:00 a.m., Eastern time, on such business day. The last day of the tender offer would be treated as a business day if expiration occurs on or after 5:00 p.m., Eastern time, on such business day.

<sup>12</sup> Because the Qualified Debt Securities would be a new issuance of securities, it is expected that the offer documents also would contain or incorporate by reference the same types of disclosures with respect to the business and finances of the issuer as would be the case in a Rule 144A/Regulation S offering memorandum for a new issuance of securities.

would allow them to easily identify holders of debt securities that are Eligible Exchange Offer Participants in advance of an exchange offer being commenced. If a holder does not qualify as an Eligible Exchange Offer Participant (or an affiliate thereof), such holder would have the option to tender subject debt securities and receive cash for such debt securities allowing them to receive an economic benefit of a cash offer if they decide to accept it. In substance, the exchange offer would be a refinancing transaction and, accordingly, fits within the rationale for the Five Business Tender Day Offer relief requested herein. We also believe that Eligible Exchange Offer Participants will benefit from an exchange offer of Qualified Debt Securities because, in many instances, it will enable them to match, on a dollar-for-dollar basis, a purchase of a new security of an issuer with the disposition of an old security of that same issuer without the potential mismatch of the amount of the new security purchased and the amount of the old security tendered and accepted that may occur in separately subscribing for an allocation of a new security being issued and tendering the old security in a cash tender offer. Finally, we believe that issuers will benefit from the ability to make an exchange offer of Qualified Debt Securities because there will be no timing lag or risk between the time of funding of the new debt securities and the time of retirement of the old securities and no “negative carry” associated with having the two debt securities outstanding at the same time.

- *Elimination of regulatory distinction between investment grade and non-investment grade debt securities.* Our requested relief eliminates the distinction in the existing 1986 relief between investment grade and non-investment grade debt securities. We believe eliminating this distinction is appropriate. First, holders of investment grade and non-investment grade debt securities are comprised of similar investor groups, and therefore we do not believe there is an investor protection concern that merits the distinction. If anything, our experience is that in many, if not most, cases, the holders of non-investment grade securities are more likely to be sophisticated institutional investors compared to holders of investment grade securities. Second, the factors cited in the 1986 no-action letters and the benefits to issuers and investors described above of shorter time periods apply to both investment grade and non-investment grade securities. Third, we believe the elimination of this distinction is consistent with Commission and Congressional policy. Both the Commission, in a series of 2008 proposals,<sup>13</sup> and Congress, when it later passed Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, have recognized the undesirability, as a public policy matter, of making regulatory distinctions on the basis of the credit rating assigned to a particular security by a nationally recognized statistical rating organization.

For these reasons, we respectfully request that the Staff grant no-action relief (i) for Five Business Days Tender Offers having an expiration date of five business days after commencement of such offer, on the terms and conditions specified herein; (ii) if an offeror were to change the consideration offered in a Five Business Day Tender Offer and hold open such offer for at least five business days after such change is announced as provided herein; and (iii) if an offeror were to make any material change to a Five Business Day Tender Offer (other than the consideration offered) and hold open such offer for at least three business days after such change is announced as provided herein.

## Conclusion

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<sup>13</sup> See *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Rel. No. 34-5870 (Jul. 1, 2008); *Security Ratings*, Rel. No. 33-8940 (Jul. 1, 2008); and *References to Ratings of Nationally Recognized Statistical Rating Organizations*, Rel. No. IC-28327 (Jul. 1, 2008).

The Staff has acknowledged that certain tender offers for non-convertible debt securities subject to Regulation 14E do not merit enforcement action when held open for less than 20 business days. Extending the Staff's no-action position to a Five Business Day Tender Offer meeting the above criteria would be consistent with the Staff's existing no-action positions, the Commission's and Congress's views on the regulatory use of credit ratings, and the interests of all participants in such transactions. We therefore request the relief sought herein be granted and respectfully suggest that the Staff consider superseding the no-action letters cited in footnote 9 of this letter with the relief requested herein.

If the Staff disagrees with our analysis, we would appreciate the opportunity to discuss this matter with you. Please do not hesitate to contact any of us if you have any questions or comments.

Very truly yours,

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