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Securities Exchange Act of 1934
Section 14(e) and Rule 14e-1

[ ], 2014

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

Dear Ms. Anderson and Mr. Orlic:

We hereby request[1] 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 conduct a tender offer for non-convertible debt securities and hold the tender offer open for (a) at least five business days (as that term is defined in the Commission's rules and as further described in footnote 12) from 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 "5 Business Day Tender Offer") or (b) at least ten business days from the date the tender is first published by means of Immediate Widespread Dissemination, so long as such tender offer satisfies the applicable criteria described below (any such offer being referred to herein as a "10 Business Day Tender Offer").

The criteria applicable to a 5 Business Day Tender Offer are that the offer would:

- be made for a class or series (or for more than one class or series) of non-convertible debt securities (regardless of any particular rating assigned thereto by any nationally recognized statistical rating organization);

- be made by the issuer or guarantor thereof, or an affiliate of such issuer or guarantor;

1 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, including significant investors in debt securities.

- be made solely for cash consideration and/or consideration consisting of Qualified Debt Securities[2], for any and all of such debt securities or up to a specified amount of such debt securities so long as, in the case of an offer for less than any and all of such debt securities, at least $500 million of the principal amount of the debt securities of such series or class outstanding before the 5 Business Day Tender Offer would remain outstanding immediately after the 5 Business Day Tender Offer (a "Qualifying Partial Tender Offer");

- be open to all record and beneficial holders of such debt securities; *provided* that exchange offers in which Qualified Debt Securities are offered could 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");

- not be made in connection with a solicitation of consents to amend the indenture, form of security or note or other agreement governing such debt securities (collectively, the "Indenture");

- not be financed with the proceeds of any Senior Indebtedness[3];

- permit tenders prior to the expiration of the offer through a guaranteed delivery procedure by means of a certification by a holder that it 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;

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[2] 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 or other publicly quoted rates (including, in the case of securities denominated in currencies other than US dollars, sovereign securities issued in the same currency as the securities subject to the offer) that are available on a trading screen or quotation service. The spread used for determining the amount of consideration offered will be announced at the launch of the tender offer. In the case of an offer of Qualified Debt Securities, the spread used for determining the coupon for such securities will be announced at the launch as a range of not more than 50 basis points, with the final spread to be announced by 9:00 a.m., Eastern time, on the business day prior to the expiration of the offer. The amount of consideration and the coupon on any Qualified Debt Securities will be fixed no later than 2:00 p.m., Eastern time, on the first business day following the expiration date of the offer. "Qualified Debt Securities" means non-convertible debt securities that are identical in all material respects (including as regards to guarantor(s), security, covenants and other terms) to the debt securities which are the subject of the tender offer except for the maturity date, interest payment and record dates, redemption provisions and interest rate.

[3] "Senior Indebtedness" means indebtedness that is incurred to finance all or a portion of the consideration offered in the 5 Business Day Tender Offer (excluding indebtedness or borrowings under any credit or debt facility existing prior to the commencement of such 5 Business Day Tender 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 the subject debt securities; or (iii) is otherwise senior in right of payment to the subject debt securities.

- be announced at or prior to 10:00 a.m., Eastern time, on the first business day of such five business day period via a press release[4] through a widely disseminated news or wire service disclosing the basic terms 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) or other instructions regarding the tender of such debt securities, (collectively, “Immediate Widespread Dissemination”)[5]; and

- not be made in anticipation of or in response to a change of control or merger (or similar business combination) transaction or another tender offer for the issuer’s equity securities and not be made on a first-come first-served basis.

The criteria applicable for a 10 Business Day Tender Offer are that the offer would:

- be made for all or a portion of a class or series (or for more than one class or series) of non-convertible debt securities (regardless of any particular rating assigned thereto by any nationally recognized statistical rating organization);

- offer consideration that may be a fixed amount of cash (and/or securities offered in exchange) or an amount of cash (and/or securities) based on a fixed spread to a benchmark or a Dutch auction and, in the case of debt securities, the coupon may be based on a spread to a benchmark;[6]

- not offer any early tender or consent fees for tenders or consents provided before the tenth business day of such tender offer and not be made on a first-come first-served basis; and

- be announced at or prior to 10:00 a.m., Eastern time, of the first business day of such tender offer via Immediate Widespread Dissemination[7]; and

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4 For purposes of a 5 Business Day Tender Offer only, the press release also would be required to be furnished in a Current Report on Form 8-K filed with the Commission prior to 12:00 p.m., Eastern time, on the first business day of the offer, but only if the issuer or the offeror is a registrant under the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

5 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 corporate action e-mails or similar lists; and (ii) issue a press release promptly after the consummation of the offer setting forth the results of the offer.

6 The spread used for determining the amount of consideration offered will be announced at the launch of the tender offer and, in the case of securities offered in exchange, the spread used for determining the coupon will be announced at the launch as a range of not more than 50 basis points, with the final spread to be announced by press release no later than 9:00 a.m., Eastern time, on the business day prior to the scheduled expiration of the offer. The amount of consideration and the coupon on any securities offered in exchange will be fixed no later than 2:00 p.m., Eastern time, on the next business day following the expiration of the offer and will be announced by press release no later than 4:00 p.m., Eastern time, on such day.

7 If the 10 Business Day Tender Offer also is being made in connection with a solicitation of consents to amend the Indenture, the press release disclosing the terms of the offer also must include an active hyperlink to or an Internet address from which a holder can obtain copies of the Indenture and proposed supplemental indenture.

- in the case of partial offers, use commercially reasonable efforts to announce the proration factor by press release by 9:00 a.m., Eastern time, on the next business day following the expiration date of the offer, or as soon thereafter as practicable.

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.[8] 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.[9] Particularly, Rule 14e-1 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.

Commencing in 1986, the Staff issued a series of no-action letters providing relief from the 20 business day requirement in the context of debt tender offers. In particular, the Staff has 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.[10]

The Staff's existing no-action relief recognizes that debt tender offers 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 being issued during a period of reasonably favorable market conditions. The ability of an issuer (or guarantor or affiliate) 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"—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 an issuer (or affiliate) 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.[11]

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[8] 15 U.S.C. § 78n(e) (2012).

[9] Regulation 14E and Rules 14e-1 through 14e-8. 17 C.F.R. §§ 240.14e-1 *et seq*.

[10] SEC No-Action Letter, *Goldman, Sachs & Co.* (March 26, 1986); SEC No-Action Letter, *Salomon Brothers Inc.* (March 11, 1986).

[11] 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 should be able to respond within the applicable time frame, especially in light of the Immediate Widespread Dissemination requirement.

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.

5 Business Day Tender Offers

In connection with a 5 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.

- *5 business days vs. 7 to 10 calendar days.* The five business day requirement is similar to the seven to ten calendar day period under existing no-action relief. 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.[12] 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 5 Business Day Tender Offer, the holder does not have to evaluate the non-economic characteristics of an amended or new security (unless it is a Qualified Debt 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. Nor is such an evaluation needed in a Qualifying Partial Tender Offer, where at least $500 million of the principal amount of the issue outstanding before the subject tender offer will remain outstanding after the subject tender offer, because such minimum remaining outstanding balance would provide a sufficient known minimum liquidity in the trading market for that security if the holder decides not to tender. As a result, holders of debt securities in a 5 Business Day Tender Offer can make the decision to sell or hold relatively quickly on a purely eco-

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[12] For purposes of the requested relief in this letter for both 5 Business and 10 Business Day Tender Offers, the 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 on 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. In addition, any 5 Business Day or 10 Business Day Tender Offer would be required to provide (i) for withdrawal rights for 5 business days to holders (not subject to waiver by virtue of a holder tendering securities or consenting in a consent solicitation) if (x) for any reason the offer has not been consummated within 60 business days after commencement, (y) the consideration being offered is reduced (other than by reason of changes in benchmark rates in a fixed spread offer) or (z) the acceptance amount is reduced and (ii) for communication by Immediate Widespread Dissemination at least three business days prior to the expiration of the offer of any changes of more than 10% in the amount of securities being sought or any other material changes to the offer (including any reduction in the consideration being offered other than as a result of changes in benchmark rates). In addition, a 5 or 10 Business Day Tender Offer may be subject to financing or other conditions.

nomic basis—in much the same manner investors in new issues make the decision whether or not to buy relatively quickly, often in a matter of hours and rarely over more than two or three business days.

- *No distinction between investment grade and non-investment grade debt securities.* Our requested relief eliminates the distinction in existing relief between investment grade and non-investment grade debt securities. We believe eliminating this distinction is appropriate. First, the 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,[13] 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 relief sought hereby be granted with respect to 5 Business Day Tender Offers.

10 Business Day Tender Offers

In cases of offers for non-convertible debt securities, where not all the criteria for a 5 Business Day Tender Offer are satisfied but where many are satisfied (including Immediate Widespread Dissemination), we respectfully request that a 10 business day period should be allowed. We believe this relief would place investors in the same or better position than they are today as compared to existing market practices that typically require a tender decision within a 10 business day period in order for a holder to receive the maximum amount of consideration being offered in the tender offer. In fact, we believe certainty relating to the ability to settle the tender offer promptly following the 10 business day period and the requirement to provide Immediate Widespread Dissemination would provide additional benefits to issuers and investors that are not available under existing market practice.

For many of the same reasons described above, including the desire by issuers to avoid paying double interest or the need to amend indenture covenants to permit a new financing, the market practice that almost universally has been adopted in connection with non-investment grade debt tender offers, based upon informal guidance consistently provided by the Staff, is to provide for an early tender date on the tenth business day (coupled with an early tender incentive of some type, such as the payment of an early tender fee or consent fee) (the "Existing Informal Guidance"). The early tender may or may not be accompanied by an early settlement of those tenders prior to the expiration of the 20 business day period. The customary inclusion of an early tender incentive creates a "dead period" between the early tender date and the formal expiration of the tender offer after 20 business days, during which it is rare for any additional investors to tender.

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[13] 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 result is that, in practice, debt investors are accustomed to making a tender decision within 10 business days. Consequently, the principal effect of the requested relief would be to provide the following benefits:

- *Earlier dissemination of information.* The requirement of Immediate Widespread Dissemination would accelerate the timeframe in which investors receive all the information they need to make a tender decision within the same time period in which they are required to make a decision currently. In the case of a concurrent consent solicitation, Immediate Widespread Dissemination would require including a hyperlink to or an Internet address from which a holder can obtain copies of the solicitation materials, as well as the Indenture governing the subject debt securities and any proposed supplemental indenture. The result also compares favorably to that faced by investors at the time of the adoption of Rule 14e-1, who likely experienced significant delays in receiving physical delivery of mailed documents through various levels of record and beneficial ownership.

- *Elimination of dead period for investors and issuers.* We believe there is broad consensus that the current dead period between the tenth business day and the 20th business day benefits neither investors nor issuers. To the extent settlement would otherwise be delayed until after the 20th business day, issuers typically would benefit from the requested relief by having the certainty of being able to settle earlier and avoid the additional carrying costs. Similarly, investors would benefit by being paid earlier, including the payment of any premium.

For these reasons, we respectfully request that the relief sought hereby be granted with respect to 10 Business Day Tender Offers.

Conclusion

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 5 or 10 business day tender offer meeting the above criteria would be consistent with the Staff's existing no-action positions, the policy underlying Section 14(e), 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 10 of this letter as well as the previously provided Existing Informal Guidance 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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