



February 4, 2010

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

Re: File Number S-7-30-09

Dear Ms. Murphy:

We are submitting this letter in response to the request by the U.S. Securities and Exchange Commission, (the “SEC”) for public comment on proposed amendments to Rule 163 under the Securities Act of 1933 (the “1933 Act”). We realize that the January 27, 2010 deadline for submitting comments has passed, but hope that you will nevertheless find our comments worthy of consideration. We believe that we can offer the SEC a different perspective than other commenters, who appear to primarily represent issuers and underwriters. Further, other commenters focus on the equity markets, overlooking the fact that debt investors have meaningfully different concerns.

The Credit Roundtable (www.creditroundtable.org) is a group of approximately 65 large fixed income institutional asset managers representing over \$2 trillion in fixed income assets under management. The assets under management belong primarily to mutual funds, pension and 401(k) plans, endowments, foundations, insurance separate accounts and other institutions. The group was formed in 2007 to, among other things, review and identify weaknesses in the new issue underwriting and distribution process from a fixed income investor perspective and to work with regulators to strengthen investor protections in fixed income securities transactions.

The corporate bond market presents challenges distinct from those of the equity market. Representatives of the Credit Roundtable have previously met with SEC Commissioners and SEC Staff to discuss the extremely fast paced and truncated offerings that currently prevail in the marketing of new corporate fixed income securities. As the market currently operates, our members, who are investing on behalf of millions of individuals, must make decisions committing hundreds of millions of dollars in compressed time frames without time to identify, let alone consult and review, basic disclosure documents, indentures, and up-to-date issuer information. Because the competition for allocations of these securities is fierce, underwriters and issuers are able to offer these securities to buyers with minimal information – forcing buyers to choose between adequate diligence on the one hand and possibly foregoing attractive investment opportunities on the other.

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
February 4, 2010

We recognize that the kind of pre-marketing that Rule 163 and the proposed amendments contemplate is more commonly associated with the equity markets than with the fixed income markets. Nonetheless, we are concerned that the proposed amendments, by permitting underwriters and distributors to prime the pump with selected potential buyers, will create further unevenness in the playing field for new corporate bonds. Our concerns are as follows:

- We believe existing Rule 163 has produced unintended consequences in terms of severely compressing the time under which fixed income securities may be brought to market, to the detriment of investors. The proposed amendments exacerbate existing weaknesses in the fixed income offering process in which institutional investors are often in the position of having to make an investment decision within minutes of learning of an offering without ready access to key disclosure documents. Under the proposed amendments, underwriters will be allowed to further pre-market fixed income securities with very limited and imprecise information regarding terms and covenants.¹
- Requiring information to be filed as a free writing prospectus does not ensure that investors receive such information in a timely manner, since the filings occur after distribution of the communication. We believe the disclosure requirements of the 1933 Act and associated rights and remedies provide little benefit to investors when required disclosures are permitted to be made after indications of interest are gathered and the underwriter's books are closed.
- With approximately 2,300 well-known seasoned issuers, half of whom have not filed automatic shelf registration statements for the type of securities offered, the potential impact of this liberalization could be significant. Underwriters for these issuers could rely on the proposed amendments to pre-market fixed income securities providing investors with minimal information on the securities, and

¹ The ability to consider a debt investment without documentation is fundamentally different than the ability to consider an equity investment. Generally, the investor's view about a proposed stock offering is a matter of price and use of proceeds, and stock prices should generally reflect an efficient dissemination and market assimilation of material information. This is even true to a lesser extent for convertible bonds, where the investment decision is largely based upon the view of the equity markets on a stock and how the price of a convertible bond reflects that view; the particular contract terms are usually less important. By comparison, the covenants that govern a straight bond are detailed in an indenture that is typically 80-100 pages and quite detailed. The contractual covenant protections are a fundamental part of the investment decision for a straight bond. These covenants address critical questions, such as: if this issuer is sold to or merged with another company, in what circumstances are the bonds puttable? What other debt can be placed alongside of or structurally senior to the bonds? What debt can be secured ahead of these bonds? These critical questions must be analyzed to make a sound investment decision, but, unlike for a stock offering where price is the driver, the answers cannot be found in the public market: debt investors must have documentation and adequate time to consider the documentation. Even when there are some issuers that may have a Form S-3 on file that technically describes possible debt securities that may be offered, in practice, the actual terms are often different from what is outlined in the legacy S-3 filing.

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
February 4, 2010

then issuers would quickly file a registration statement that goes automatically effective all in a matter of hours. In addition, due to the large number of WKSIs, fixed income credit analysts simply cannot stay sufficiently conversant with all of them to cope with any further compression in the offering process.

As we have recently discussed with the SEC, we believe critical information such as a preliminary prospectus or substantive term sheet should be made immediately accessible at the time a new bond transaction is announced. We are concerned that the delicate balance between protecting investors and aiding capital formation has, in the corporate new issue market, begun to tip dangerously in favor of capital formation at the expense of investor protection. The problems in the credit markets that began in 2007 should signal to the SEC and its Division of Corporation Finance that the effects of regulatory actions liberalizing the communication and shelf offering rules under the 1933 Act need to be reevaluated, particularly with respect to fixed income securities offerings, which we believe historically have been given less attention in terms of disclosure reforms by the SEC and the Division.

We appreciate the opportunity to comment on the proposed amendments to Rule 163 and would be pleased to respond to any questions you may have regarding our views. Please contact Lyn Perlmuth, Director of the Fixed Income Forum, at (212) 224-3074 to arrange a call or meeting with members of the Credit Roundtable.

On behalf of the Credit Roundtable,



Lyn Perlmuth | Director | Fixed Income Forum
Institutional Investor
225 Park Avenue South 7th Fl. | New York NY 10003
t: (212) 224 3074 | f: (212) 224 3838
e: lperlmuth@iimemberships.com | w: www.iimemberships.com