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December 27, 1991

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
Judiciary Plaza  
450 Fifth Street, N.W.  
Washington, D.C. 20549

RECEIVED  
DEC 30 1991  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Re: Black Box Incorporated

Gentlemen:

At the suggestion of Cecilia Blye of the staff of the Securities and Exchange Commission (the "Commission"), I am writing to pose three interpretive questions concerning the Black Box Incorporated no-action letter ("Black Box") recently promulgated by the Commission. In Black Box, the issuer on whose behalf the no-action request was made (the "Company"), proposed to engage in a contemporaneous private placement of convertible debentures and a public offering of common stock. Under the circumstances set forth in Black Box, the private placement and the public offering were not integrated.

1. In Black Box, the Company was apparently financially troubled. Would the Staff's answer have changed if Black Box was not financially troubled or is Black Box a "hardship" exception to the general rules on integration?

2. In Black Box, the private placement was made to up to 35 "qualified institutional buyers" (as defined in Rule 144A promulgated under the Act, and up to four "accredited investors" (as defined in Regulation D promulgated under the Act). Is there any limit on the number of "qualified institutional buyers" or "accredited investors" to whom offers may be made or to whom sales may be made in order to fall within the rationale of Black Box? In this connection, I note Ms. Blye's concern that sales made to large numbers of investors may indicate that a purportedly private placement has been conducted as a public offering. However, when the Commission adopted Regulation D, the Commission shifted away from the strict numerical limitations on investors under former Rule 146. When Regulation D was adopted in 1982, the limitations on numbers of investors (except for the limit of 35 on non-accredited investors) were eliminated. Rule 502(c) under Regulation D focuses instead on the manner of offering and not the number of offerees. Thus, although a large number of

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investors in an offering may be some indication that the offering was conducted in a manner violative of the prohibition against a "general solicitation" under Rule 502(c), it is not by itself determinative of whether such a general solicitation has occurred. Accordingly, I would think that the Commission would continue to rely on the body of interpretative law that has grown up around Rule 502(c), rather than a numerical limitation on investors, to determine whether a public offering has been made.

If the Staff does believe that a numerical limitation on investors is appropriate for Black Box to apply, the limit should probably only apply to the number of "accredited investors" involved in the private placement and should not restrict the number of "qualified institutional buyers". Inherent in the Commission's recent adoption of Rule 144A is the assumption that "qualified institutional buyers" do not need the protection which the registration process provides.

3. In Black Box, the Company was privately placing convertible debentures and publicly selling common stock. Would the Staff's answer have changed if the securities being sold in the private placement and the public offering were identical? For example, would the answer remain the same if Common Stock were being sold in both the private placement and the public offering.

We appreciate the Commission's consideration of these questions. If you have any questions concerning the above, please contact me at (212) 476-8362.

An original and seven copies of this letter are submitted herewith.

Very truly yours,



Kenneth R. Koch

cc: Cecilia Blye, Esq.

KRK:sr

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DIVISION OF  
CORPORATION FINANCE

*Pub. Ref.*  
UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

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**Public Reference Copy**  
February 28, 1992

Kenneth R. Koch, Esq.  
Squadron, Ellenoff, Pleasant & Lehrer  
551 Fifth Avenue  
New York, New York 10176

Dear Mr. Koch:

Our responses to the interpretive questions raised in your letter of December 27, 1991 regarding the positions expressed in the staff's letter dated June 26, 1990 to Black Box Incorporated (the "Black Box letter") are as follows:

1. The staff's positions in the Black Box letter were not based on the financial condition of the company. Specifically, in response to your concerns expressed during our telephone conversations, the staff's position with respect to integration of the Black Box registered initial public offering and a simultaneous unregistered offering by Black Box of convertible debentures (the "Black Box offerings") was a policy position taken primarily in consideration of the nature and number of the offerees, and not based on the financial condition of the company.
2. The number of offerees and purchasers is a factor considered by the staff in evaluating the applicability of the policy position. As we discussed, the Black Box policy position on integration was simply a formal articulation of an informal position the staff has taken previously with respect to simultaneous registered offerings and unregistered offerings to a limited number of first-tier institutional investors in connection with structured financings. Because the position expressed with respect to the Black Box offerings is a policy position, it is narrowly construed by the staff. The staff interprets the position to be limited in applicability to situations where a registered offering would otherwise be integrated with an unregistered offering to i) persons who would be qualified institutional buyers for purposes of Rule 144A and 2) no more than two or three

large institutional accredited investors. The position does not constitute a determination by the staff that the unregistered offering is in fact a bona fide private placement.

3. The position of the staff with respect to integration of the Black Box offerings would not have been different if common stock had been sold in both the public and the private offerings. In this regard, it should be noted that the staff historically has treated an offering of a class of securities and an offering of another security convertible into that class of securities as offerings of the same class of securities for purposes of the integration doctrine.

I trust that the foregoing information is of assistance to you. Should you have any further questions regarding this matter, please feel free to contact me again.

Sincerely,



Cecilia D. Blye  
Special Counsel

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With regard to the availability of the Section 4(2) private offering exemption, it should be noted that the staff takes the position that the filing of a registration statement is deemed to be the commencement of the public offering. See letter from former director of the Division of Corporation Finance, John J. Huber, to Michael Bradfield, general counsel of the Board of Governors of the Federal Reserve System (March 23, 1984). Further, your attention is directed to SEC Litigation Release No. 10241 (December 19, 1983), regarding SEC v. Michael A. Traiger, Traiger Energy Investments (U.S.D.C. C.D. Cal. Civil Action No. 83-2738-LTL JPx).