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SEC PROPOSES REVISIONS TO RULE 144 AND RULE 145 TO SHORTEN THE HOLDING PERIOD FOR AFFILIATES AND NON-AFFILIATES¹

To: Clients and Friends of Tannenbaum Helpern Syracuse & Hirschtritt LLP

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Summary

On June 22, 2007, the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “SEC”) issued a release entitled “Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates”² (the “Proposal”), which proposes certain amendments to Rule 144 and Rule 145. Rule 144 under the Securities Act of 1933, as amended (the “Securities Act”) creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. Rule 145 under the Securities Act establishes resale limitations on certain persons who acquire securities in business combination transactions. The SEC believes that the proposal will increase the liquidity of privately sold securities and decrease the cost of capital for all companies without compromising investor protection. Interests in private securities should benefit from the significantly decreased holding periods.

In the Proposal, the SEC looks to simplify the Preliminary Note of Rule 144, amend the holding period requirements of Rule 144, reduce the resale restrictions applicable to non-affiliates, eliminate the manner of sale restrictions for debt securities, increase Form 144 Filing thresholds, and codify Staff interpretive positions that apply to Rule 144. The SEC also proposes slightly amending Rule 145 and making consistency changes to other Rules in order to align them to the proposed changes to Rule 144. Finally the SEC requests comments on how best to coordinate Form 144 and Form 4 filings.

¹ This memorandum provides general information on the subject matter described, and it should not be relied on for legal advice on any matter, which may turn on specific facts. You should seek specific legal advice before acting with regard to the subjects addressed here.

² Release No. 33-8813 (Jun. 22, 2007).

Background

Section 5 of the Securities Act requires the registration of all offers and sales of securities in interstate commerce or by the use of mails, unless an exemption from registration is available. Section 4(1) of the Securities Act provides for such an exemption for transactions by any person other than an issuer, an underwriter or a dealer. The definition of underwriter is key to the section 4(1) exemption.³ In 1972, the SEC adopted Rule 144 to provide a safe harbor from the definition of “underwriter,” such that if an investor satisfies all of Rule 144’s applicable conditions in connection with a transactions, he or she will not be deemed an underwriter, and the Section 4(1) exemption would be available for its resale of securities.

Rule 144 regulates the resale of two categories of securities, restricted securities and control securities. Restricted securities are those acquired pursuant to one of the transactions listed in Rule 144(a)(3). While not defined specifically in the Rule, “control securities” generally refer to securities held by affiliates of an issuer, regardless of how the affiliates acquired the securities. It is possible that an affiliate can acquire securities that would be characterized as both restricted and control securities.

Why should an investor care? If an investor has purchased a security from an issuer, or an affiliate of the issuer, in a transaction or a chain of transactions not involving a public offering, then the investor owns “restricted securities.” In order for that investor to subsequently sell those restricted securities, it must do so either through a registered offering⁴ or through an exemption from the Section 5 registration requirement. The typical transactional exemption⁵ used by an investor can be found in Section 4(1) which exempts “Transactions by any person other than an issuer,⁶ underwriter, or dealer.”⁷ While an investor can generally tell whether or not it is an issuer or a dealer, it is much more difficult to determine whether the seller would be deemed an “underwriter.”

If an affiliate of the issuer, or non-affiliate of the issuer, has held the restricted securities for less than two years,⁸ the following criteria must be met prior to any resale in order to avoid underwriter status:

- (i) there must be adequate information about the issuer;⁹

³ Section 2(a)(11) broadly defines an “underwriter” as “any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking...”

⁴ A subsequent registration is coordinated with the issuer and is usually done in connection with registration rights (mandatory or demand) or piggyback rights that are attached to the privately placed securities.

⁵ Private resales can also be accomplished to a limited extent through the Section 4(1½) exemption, Rule 144A and Rule 904 of Regulation S.

⁶ Section 2(a)(4) defines the term “issuer” to mean “...any person who issues or proposes to issue any security...”

⁷ Section 2(a)(12) defines a dealer as “any person who engaged either all or part of his time, directly or indirectly, as agent, broker, or principal, in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person.”

⁸ Currently, Rule 144 allows a non-affiliate to publicly resell restricted securities without being subject to the Rule’s limitations if the seller has owned the securities for at least two years; provided, however that the seller is not an affiliate of the issuer and has not been one for the previous three months.

⁹ Rule 144(c).

- (ii) if the securities are restricted securities, then the seller must have held the security for a specified holding period;¹⁰
- (iii) the resales must be within specified sales volume;¹¹
- (iv) the resales must comply with the manner of sale conditions;¹² and
- (v) the selling security holder may be required to file a Form 144.¹³

Proposed Amendments

I. Amendment of Holding Period in Rule 144(d)

(A) Six-Month Holding Period for Exchange Act Reporting Companies

The Staff proposes reducing the holding period under Rule 144(d)¹⁴ from one year (assuming all conditions in the Rule are met) to six months for resales of restricted securities of Exchange Act reporting companies¹⁵ held by affiliates and non-affiliates, if they have not engaged in hedging transactions with respect to the securities. The Staff believes that the shorter holding period will allow reporting companies to raise capital more often through the issuance of restricted securities, rather than through complicated financing structures that significantly increase the cost of capital for such issuing companies. The Staff believes that holding a security for six months is a reasonable indication that an investor has assumed the economic risk of investment in those securities.¹⁶

In addition to the holding period requirement, another sensitive issue for the SEC is the availability of information in the market about securities. Because the market might be lacking information with respect to non-reporting companies, the SEC differentiates reporting companies and non-reporting companies for the application of its holding period requirement. With respect to non-reporting companies, the SEC proposes that the holding period for restricted securities remain a one year holding period requirement for affiliates and non-affiliates.

¹⁰ Rule 144(d).

¹¹ Rule 144(e).

¹² Rule 144(f) and (g).

¹³ Rule 144(h).

¹⁴ Rule 144(d) allows security holders to sell limited amounts of restricted securities after holding their securities for at least one year if certain conditions of Rule 144 are met.

¹⁵ The reduced holding period would only apply to those issuers that are, and have been for at least 90 days prior to the sale, subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”).

¹⁶ However, with respect to non-reporting companies, the Staff proposes that the holding period for restricted securities remain at 1 year for affiliates and non-affiliates as the Staff is concerned the market does not have sufficient information and safeguards with respect to non-reporting companies.

(B) Tolling Provision

The SEC has proposed to reinstate¹⁷ a provision that will toll the holding period for restricted securities of Exchange Act reporting companies while an affiliate or non-affiliate is engaged in certain hedging transactions.¹⁸ The SEC is concerned about the effect of hedging activities, which shift the economic risk of investment away from the security holder which makes it more difficult to determine whether the investor has held the securities for investment purposes and not with a view to distribution. For example, prior to the expiration of the required holding period, a security holder may enter into an equity swap agreement with a third party, under which the security holder exchanges the dividends received on the restricted securities for the dividends on, for example, a securities index. In addition, that shareholder may agree to exchange, at a set date, any price change in the security since the date of the agreement for any price change in the securities index. The effect of such a transaction would be the economic equivalent of selling the restricted securities before the holding period had expired and purchasing the securities index.

Shortening the holding period to six months makes hedging arrangements more attractive, easier and less costly because they would cover a shorter period of time. Therefore, the SEC proposes adding a new paragraph to Rule 144 to toll the proposed six-month holding period for restricted securities of Exchange Act reporting companies while affiliates or non-affiliates are engaged in certain hedging transactions.

Before 1990, the tolling provision only covered hedging transactions with short sales and options. Because many new risk-hedging products such as equity swaps and single stock futures were introduced in the market, which can also have the effect of eliminating risk, today, the proposal for tolling the holding period should include a larger scope of hedging instruments. Therefore, the SEC proposes to toll the holding period when the security holder has a short position, or has entered into a “put equivalent position,”¹⁹ with respect to the same class of securities (or in the case of non convertible debt, with respect to any nonconvertible debt securities of the same issuer.)

Impact of Tolling on Tacking. The proposed tolling provision would work in conjunction with the provisions that permit tacking,²⁰ and as such a selling security holder would be required to determine whether the prior owner²¹ had engaged in hedging activities with respect to the securities. If adopted, the holding period would not include any period in which a prior owner held a short position or put equivalent position with respect to the securities.

¹⁷ Prior to 1990, Rule 144 tolled the holding period of a security holder maintaining a short position in, or any put or other option to dispose of, securities equivalent to the restricted securities owned by the security holder. In Release No. 33-6862 (Apr. 23, 1990), the SEC eliminated this tolling provision.

¹⁸ The proposals would not change Rule 144(d)'s requirement that the holding period commence at the time the full purchase price is paid.

¹⁹ As such term is defined in Exchange Act Rule 16a-1(h).

²⁰ Tacking allows a security holder to count the period that the securities were held by the previous owner as part of his or her own holding period for the purposes of Rule 144(d).

²¹ A prior owner refers to a person that previously owned the securities and sold or transferred the securities to the current owner.

Thus, if a security holder for whose account the securities are to be sold reasonably believes that no such short or put equivalent position was held by the prior owner, then there would be no tolling of the holding period.²²

The proposed rule would impose a ceiling on the new tolling provision so that, regardless of the security holder's hedging transactions, the holding period, as computed under all other paragraphs in Rule 144(d), would in no event extend beyond one year. The tolling provision would not apply to the resale of such non-reporting companies' securities.

Impact of Tolling on the Manner of Sale Provisions. As a result of the Tolling provision proposal, the SEC has proposed a few additional changes.²³ Rule 144(f) states the manner of sale requirements which include a sale through "brokers' transactions" within the meaning of Section 4(4) of the Securities Act. Rule 144(g) sets forth the transactions by a broker that are deemed to fall under "brokers' transactions," which states the requirement that a broker conduct a reasonable inquiry to determine whether it is aware of any circumstances indicating that the person for whose account the securities are sold is an underwriter. The SEC has proposed to amend existing Note (ii) of Rule 144(g)(3) to delineate some questions that the broker should ask to determine whether any short position or put equivalent position with respect to the securities sold existed.

II. Significant Reduction of Requirements Applicable to Non-Affiliates

As mentioned above, non-affiliates cannot currently resell their restricted securities for one year. Between one year and two years, non-affiliates (like affiliates) are subject to applicable conditions of Rule 144 for the resale of their securities. The SEC believes that holding the securities for the requisite holding period provides a good indication that a non-affiliate has assumed the economic risk of investment in the securities. Therefore, the SEC proposes to significantly reduce the complexity of resale restrictions with respect to restricted securities of Exchange Act reporting companies for non-affiliates after the six-month holding period, by lightening the resale requirements. As a result, under the proposal, non-affiliates holding reporting company restricted securities would only be subject to Rule 144(c).²⁴ In addition, non-affiliates would be able to freely resell the restricted securities of reporting and non-reporting companies after one year.

Affiliates would be able to resell restricted securities of reporting companies after six months, subject to resale requirements, and of non-reporting companies after one-year also subject to the same resale requirements.

Below is a chart which sets forth the proposed changes.

²² If a security holder is unable to determine that the prior owner did not engage in hedging activities with respect to the securities, then the security holder will not be allowed to tack that period in which they are unable to determine whether a hedging activity took place. See Proposed Rule 144(d)(3)(xi)(C).

²³ The Staff has proposed to amend Form 144 to require the inclusion of information on a short or put equivalent position.

²⁴ Rule 144(c), which is that current information regarding the issuer of the securities be publicly available.

	Affiliate or Person Selling on Behalf of Affiliate	Non-Affiliate (and has not been one during prior Three Months)
Restricted Securities of Reporting Companies	<p><u>During Six-month holding period*</u> - no resales under Rule 144 permitted.</p> <p><u>After Six-month holding period*</u> - may resell in accordance with all Rule 144 requirements including, current public information, volume limitations, manner of sale for equity securities, and filing of Form 144.</p>	<p><u>During Six-month holding period*</u> - no resales under Rule 144 permitted.</p> <p><u>After Six-month holding period* but before one year</u> - may resell in accordance with the current public information requirement.</p> <p><u>After one year</u> – unlimited public resale under Rule 144; need not comply with other Rule 144 requirements.</p>
Restricted Securities of Non-Reporting Companies	<p><u>During one-year holding period</u> - no resales under Rule 144 permitted. Tolling provision does not apply.</p> <p><u>After one-year holding period</u> - may resell in accordance with all Rule 144 requirements except holding period, but including current public information, volume limitations, manner of sale for equity securities, and filing of Form 144.</p>	<p><u>During one-year holding period</u> - no resales under Rule 144 permitted. Tolling provision does not apply.</p> <p><u>After one-year holding period</u> - unlimited public resale under Rule 144; need not comply with other Rule 144 requirements. Tolling provision does not apply.</p>

* Such holding period may be longer than six months (but not longer than one year), depending on hedging activities.

III. Elimination of Manner of Sale Limitation for Debt Securities

Rule 144(f) currently requires that restricted securities be sold in “brokers’ transactions” or in transactions directly with a “market maker.”²⁵ The Rule further prohibits a seller from (i) soliciting or arranging for the solicitation of orders to buy the securities in anticipation of, or in connection with a Rule 144 transaction, or (ii) making any payment in connection with the offer or sale of the securities to any person other than the broker who executed the order to sell the securities. The limitations on the manner of sale are intended to assure that any special selling efforts or compensation associated with a distribution are not present in a Rule 144 sale.

In the past, the Staff had sought to eliminate the manner of sale requirements completely, but several commenters argued that the manner of sale limitations were necessary because the brokers acted as a form of gatekeeper to ensure compliance with the requirements of Rule 144. While the Staff agrees with this argument, the Staff believes that eliminating the manner of sale provision in the equities market could foster abusive transactions. However, the Staff believes that these same concerns are not raised in the fixed income securities market and that manner of sale restrictions may unnecessarily burden resales, because these resales are traded in dealer transactions in which the dealer seeks buyers for securities to fill the sell orders. Thus, the Staff is proposing to eliminate the manner of sale requirements with respect to resales of debt securities.²⁶

²⁵ As defined in Section 3(a)(38) of the Exchange Act.

²⁶ The Staff noted in the Proposal that non-participating preferred stock, asset backed securities and other forms of debt-like securities purchased by institutional investors should be treated as similar as debt securities.

IV. Increase of the Form 144 Filing Thresholds

The SEC proposes to modify Rule 144(h) which currently requires a selling security holder to file a Form 144 when selling either more than 500 shares or more than \$10,000 within a three-month period. Under the proposal, given the suggested reduction in the holding period by non-affiliates, the filing of a Form 144 for a specific sale threshold would only apply to affiliates and the thresholds would be increased to 1,000 shares or \$40,000.

Under the proposed Rule the filing of Form 144 by an affiliate of the Issuer must take place concurrently with either the placing with a broker of a sale order or upon the execution of such sale directly with a market maker. Often affiliates are also insiders of the issuer under Section 16 of the Exchange Act. The Exchange Act requires insiders to report changes in beneficial ownership, including purchases and sales of securities on Form 4, which Forms are to be filed two business days after the transaction is executed. Since some items in Form 144 are duplicative of Form 4, the SEC has proposed to coordinate Form 144 and Form 4 to reduce the burden on those affiliates who need to file both Forms 144 and Forms 4. The SEC requests comments with respect to how best coordinate the filing of the two forms in terms of deadline as well as content, in order to make it easier and more straightforward for persons requested to file and especially to avoid making it confusing.

V. Codification of Several Staff Positions

Throughout the years since Rule 144 was initially adopted, the Staff has been asked for its position on the application of the rule to certain facts. The Staff is proposing to codify some of these positions.

(A) Securities acquired under Section 4(6) of the Securities Act are considered “restricted securities.”

The Staff previously interpreted that securities purchased through a Section 4(6) private placement were considered to be restricted securities under Rule 144(a)(3).²⁷

Section 4(6) provides for an exemption from registration for an offering of securities not exceeding \$5,000,000, made only to accredited investors, not involving any advertising or public solicitation by the issuer or anyone acting on its behalf, and for which a Form D has been filed. The Staff believes that the resale status of Section 4(6) securities should be treated as securities received in non-public offerings and included in the definition of restricted securities. Therefore, the Staff is proposing to amend Rule 144 to codify their position that securities acquired under Section 4(6) are restricted securities.

(B) Tacking of holding periods when a company reorganizes into a holding company structure.

The Staff had previously interpreted Rule 144 to allow holders to tack the holding period in connection with transactions made solely to form a holding company.²⁸ The Staff believes that

²⁷ See the Division of Corporation Finance’s Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 104 (Rule 144(a)(3)), Question No. 104.03.

²⁸ Morgan Olmstead (Jan. 8, 1988)

in certain transactions, tacking is appropriate because the securities exchanged are substantially equivalent and there is no significant change in economic risk of the investment in the securities.

The Staff is proposing to codify this interpretation to allow tacking of the holding period only if the following three conditions are satisfied:

- (i) the new holding company securities are issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor into a holding company;
- (ii) the security holders receive securities of the same class with same proportional interest in the holding company as they held in the predecessor company, and they have substantially the same rights and interest in the holding company as what was possessed in the predecessor company; and
- (iii) immediately following the transaction, the holding company has no significant assets other than securities of the predecessor and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

(C) Tacking of holding period for conversions and exchanges of securities.

The Staff is proposing to codify its position that if the securities sold were acquired from an issuer solely in exchange for other securities of the same issuer, then the newly acquired securities shall be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.²⁹ However, if (i) the original securities did not permit cashless conversion or exchange by their terms, (ii) the parties amend the original securities to allow for cashless conversion or exchange, and (iii) the security holder provided consideration other than solely securities of the issuer for that amendment, then shares will be deemed to have been acquired on the date of the amendment of the original securities (*i.e.*, tacking will not be allowed to the date of original purchase).

(D) Cashless exercise of options and warrants.

The Staff is also proposing to codify its position that upon a cashless exercise of options or warrants, the newly acquired securities will be deemed to have been acquired when the corresponding options or warrants were acquired, even if the options or warrants originally did not provide for cashless exercise by their terms.³⁰ However, if (i) the original options or warrants do not permit cashless exercise by their terms, and (ii) the holder provides consideration, other than solely securities of the issuer, to amend the options or warrants to allow for cashless exercise, then the options or warrants would be deemed to have been acquired on the date that the original options or warrants were so amended (*i.e.*, tacking will not be allowed to the date of original purchase).

²⁹ See Planning Research Corp. (Dec. 8, 1990).

³⁰ See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 212 (Rule 144(d)(3)), Interpretation No. 212.01.

In addition, the Staff will clearly state that it is of the opinion that options and warrants not purchased for cash or property, such as employee stock options, which do not create investment risk in a manner that would justify identification of the holding period of the securities received upon exercise with that of the options or warrants would not be deemed to have been acquired on the date the investor exercises the option or warrant. Rather, the holding period for such securities would begin on the date that the option or warrant was exercised.

(E) Aggregation of pledged securities.

The Staff has proposed to amend Rule 144(e)(2)(ii) by adding a clarifying note which would address the calculation of the volume of securities that a pledgee may sell. The proposed amendment would codify the Staff's position³¹ that so long as the pledgees are not the same person under Rule 144(a)(2), a pledgee may sell the pledged securities without having to aggregate the sale with sales by other pledgees of the same securities from the same pledgor, as long as there is no concerted action by those pledgees.³² The pledgor, though, would still have to aggregate the sale of his/her securities with any pledgees' sales.

(F) Treatment of securities issued by "reporting and non-reporting shell companies."

The Staff is further proposing to codify a modified version of its interpretive position³³ with respect to the non-applicability of Rule 144 to the resale of securities issued by companies that are, or previously were, blank check companies.³⁴ The Staff indicated that it would modify this interpretive position so that the provision would apply to securities of all companies, other than asset-backed issuers, that meet the definition of "shell company"³⁵ (for purposes of the Release, the Staff uses the term "reporting and non-reporting shell companies").

However, once a reporting company has ceased being a shell company and there is adequate disclosure in the market that would serve to protect against further abuses, the Staff is proposing to permit the availability of Rule 144 for resales when:

- (i) the issuer of the securities that was formally a reporting or non-reporting shell company has ceased to be a shell company;
- (ii) the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;
- (iii) the issuer of the securities has filed all reports and material required to be filed during the preceding 12 months (or such shorter period that the registrant was required to file such reports and materials); and

³¹ See the Division of Corporation Finance's Compliance and Disclosure Interpretations on rule 144 (Updated April 2, 2007), at Section 216 (Rule 144(e)(3)), Interpretation No. 216.01.

³² This presumes that the loans and pledges are bona fide transactions.

³³ Ken Worm, NASD Regulation, Inc. (Jan. 21, 2000).

³⁴ A blank check company is one that (i) is in the development stage; (ii) has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified third party; and (iii) issues penny stock (as defined in Rule 3a51-1 promulgated under the Exchange Act).

³⁵ A shell company means an issuer, other than an asset-backed issuer, that has (i) no or nominal operations; and (ii) either (a) no or nominal assets, (b) assets consisting solely of cash and cash equivalents, or (c) assets consisting of any amount of cash and cash equivalents and nominal other assets.

- (iv) at least 90 days have elapsed from the time the issuer files current “Form 10 information”³⁶ with the SEC reflecting its status as an entity that is not a shell company.

(G) Representations required from security holders relying on Exchange Act Rule 10b5-1(c).

Rule 10b5-1 promulgated under the Exchange Act states that a transaction (*i.e.*, a purchase or sale) in a security of an issuer is deemed to be “on the basis of” material non-public information if such person engaging in the transaction was aware of the material non-public information when the person entered into the transaction. Rule 10b5-1(c) provides an affirmative defense when a person’s transaction was not “on the basis of” material non-public information. For this defense to be available, the person must demonstrate: (i) before becoming aware of the material non-public information, he or she had entered into a binding contract to purchase or sell the securities, provided instructions to another person to execute the trade on their behalf, or adopted a written plan for trading the securities; (ii) the contract, instructions or written trading plan satisfy the conditions of Rule 10b5-1(c); and (iii) the purchase or sale that occurred was pursuant to the contract instruction or plan.

Currently, Form 144 requires the selling security holder to represent to the purchaser that he or she “does not know of any material adverse information in regard to the current and prospective operations of the issuer of the securities to be sold which has not been publicly disclosed.” The Staff has taken the position, that a person who satisfies Rule 10b5-1(c) may modify the Form 144 representation to indicate that he or she had no knowledge of material adverse information about the issuer as of the date on which the holder adopted the written trading plan or gave the trading instructions.³⁷

The Staff is proposing to codify this position in order to reconcile the Form 144 with Rule 10b5-1.

VI. Amendment to Rule 145

The SEC in its proposal also suggests an amendment to Rule 145 of the Securities Act. Rule 145 of the Securities Act says that when an exchange of securities takes place in connection with reclassifications of securities, mergers or consolidations, or transfer of assets subject to shareholder vote, then such exchange constitutes a sale of securities. The parties to those transactions or their affiliates other than the issuer are presumed to be an underwriter under Rule 145(c), and Rule 145(d) states the restrictions to the resale of those securities.

The SEC is proposing to eliminate the “underwriter presumption” in most circumstances, but proposes to keep the presumption for shell companies and their affiliates and promoters to avoid abusive sales of securities. Rule 145(d) will have to be harmonized with the Rule 144 proposed changes regarding shell companies. The Rule 145(d) proposal suggests that presumed underwriters be permitted to resell their securities to the same extent that affiliates of a shell company would be permitted to resell their securities under Ruler 144. Therefore, securities of a shell company party to a Rule 145 transaction will only be able to be resold when the company

³⁶ Form 10 information is equivalent to information that a company would be required to file if it were registering a class of securities on Form 10, Form 10-SB, or Form 20-F under the Exchange Act.

³⁷ See the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001), at Rule 10b5-1; Form 144, Interpretation No. 2.

ceases to be a shell company and at least 90 days have elapsed since the securities were acquired in the transaction, subject to Rule 144 conditions. According to the Rule 144 proposed amendment, the securities could then be resold (i) 6 months after having been acquired in a transaction, subject only to the current public information condition, and (ii) freely one year after having been acquired in a transaction, provided the seller is not an affiliate of the issuer and has not been an affiliate during the three months prior to the sale. To avoid any abuse, the SEC proposes that Rule 145(c) and (d) will not apply for transactions that are part of a plan or scheme to evade the registration requirements of the Securities Act, as in the amendment to the Preliminary Note of Rule 144.

VIII. Other Amendments

Among other clarifying changes, the SEC suggests adding a statement to the Preliminary Note of Rule 144 that the Rule is not available with respect to any transaction or series of transactions that, although in technical compliance with the Rule, is part of a plan or scheme to evade the registration requirement of the Securities Act.

In order to conform additional sections of the Securities Act and certain rules promulgated thereunder and keep those provisions consistent with the proposed rules, the Staff's Proposal includes additional changes with respect to Rule 190 and Rule 701(g)(3) which are not discussed in this memorandum. If you have any questions with respect to these sections of the Proposal, then please feel free to contact us.

Conclusion

The Staff is proposing significant changes to Rule 144 and corresponding changes to Rule 145 on the basis that such changes will provide greater liquidity to the market, decrease the cost associated with raising capital, and provide the same level of investor protection.

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If you wish to discuss the Release with us or have any comments that you would like us to convey to the SEC, please do not hesitate to contact us.

September 5, 2007