P E T E R J. W E I S M A N, P.C.

August 31, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

Re: File Number S7-11-07; Release No. 33-8813; Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates

Dear Ms. Morris:

We primarily represent institutional investors as legal counsel in PIPE transactions and are strongly in favor of the Commission's proposal to reduce the Rule 144 holding period and loosen selling restrictions on "restricted securities" for non-affiliates. In particular, we have the following comments:

Six Month Holding Period

We commend the Commission on proposing the reduction of the Rule 144 holding period to six months and urge consideration for reducing it even further, perhaps to three months. We believe a three month holding period would better support capital formation while not impairing, and in some respects improving, investor protection.

Reduction of the holding period to six months or shorter should not compromise investor protection, particularly with regard to sales by non-affiliates. Publicly traded securities are fungible; if a holder of restricted securities sells the exact same class of securities which are not restricted (which, for example, may have been purchased in the open market), then a purchaser is indifferent as to whether it is receiving shares purchased from the issuer or in the open market or from one who is selling short. We do not feel that compelling a holder to sell identical securities from Batch A (freely tradable) instead of Batch B (restricted) affords the purchaser much additional protection, if any.

On the contrary, reduction of the holding period should greatly enhance small public companies' ability to raise capital, and we believe much more so with a three month holding period. It would reduce the costs involved in any PIPE financing: the pricing and terms of any such transaction would be more favorable to the issuer since investors would be incurring less risk in holding restricted securities, and the expense of registering restricted securities for resale would be saved (which could be significant). In addition, PIPE investors would be more likely to invest in companies where they might otherwise

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shy away, especially in situations where the long-term illiquidity risk has been raised following the SEC staff's recent interpretations under Rule 415. Perhaps most importantly, if an issuer in need of funds is more likely to obtain the necessary financing (or a greater amount of and/or less expensive financing) with a shorter holding period, then current investors in such issuer would be better protected with a shorter period that saves their investment.

We believe a three month holding period for non-affiliates would foster capital formation much more than a six month period since, in our experience, PIPE investors appear to have a typical tolerance for illiquidity of about 90 days (120 days if there's a full review of the registration statement), after which time they expect freely tradable shares based on typical registration rights terms. Moreover, since (a) the six month holding period is two months longer than such outside 120-day time frame for liquidity (as well as the analogous four-month holding period required in Canada), and (b) shares underlying warrants would also be required to be held for six months following a cash exercise absent registration, we fear the amendment, even though beneficial and remarkable, may fall short of providing the huge benefit, in terms of significant time and expense savings of issuers and SEC staff, of greatly reducing the number of registration statements required to be filed.

A three month holding period (for non-affiliates at least) should be long enough to fall under Rule 144's safe harbor for deeming a purchaser not to be an underwriter. Traditional underwriters rarely undertake even several days of market risk, let alone three months. As defined in the Securities Act, an underwriter is someone who purchases securities with a view to, or offers or sells securities for an issuer in connection with, a public distribution. We believe three months is a reasonable demarcation to differentiate between a person effectively distributing securities on behalf of the company for compensation (in the form of a discount) and a person taking an economic risk in pursuit of investment gains. Note that essential to such a short holding period is the issuer being current in its public filings, providing similar disclosure to registration (if there are particular items required to be disclosed in a registration statement but not in periodic filings that the Commission believes should be disclosed in order to provide for a shorter holding period, we suggest amending the periodic reporting requirements accordingly or otherwise developing a mechanism for such disclosure prior to expiration of the holding period). Sales by affiliates are obviously of greater concern regarding circumvention of the Securities Act, so perhaps consider reducing the holding period to less than six months only for non-affiliates.

Tolling

Since PIPE investors often include hedge funds, we think tolling of the holding period during such time as the investor maintains a short position would impede fundraising without significant investor protection, for reasons similar to those described above. Although we suggest removing the tolling provision from the proposed amendment, we understand the Commission's concern of the appearance of an underwritten offering if a purchaser of securities does not assume any economic risk, and therefore we have the following comments:

First, the proposed amendment appears to toll the holding period on ALL restricted securities held regardless of the amount of the short position. This seems inappropriate: the holding period should only be tolled on such number of restricted shares as is equal to the number of shares effectively sold short, such that restricted shares may be sold following the proposed six month period until the holder has a net short position. If an investor invests $1 million in a company and sells one share short, it would not be fair, and in fact would be counterproductive, to preclude such investor from the benefits of Rule 144 – this would appear to have no purpose other than to discourage hedging activity generally, which we do not think is the purpose of Rule 144.

Second, note that although the tolling provision is intended to counteract investors attempts to avoid economic risk by hedging shares purchased (and thus look like a distribution), the proposed amendment as currently drafted is so broad that the tolling is effective even if the short (or equivalent) position is entered into long before the issuance of the restricted securities.

Third, although we disagree with attempts to impede hedging activity generally, perhaps another solution is to make the tolling provision inapplicable if the investor does not have a short position, or, more narrowly, does not enter into any hedging transaction related to the newly issued restricted securities, during the first 15 days following the issuance of the restricted securities. This would alleviate concerns that the investor is really an underwriter not intending to take any market risk.

Finally, as pointed out above, a major advantage of the amendment should be the reduction in required resale registrations. Since warrants typically are not exercised until the holder is ready to sell the underlying shares, if a registration statement is not in effect following a cash exercise then the holder is likely to short the number of shares exercised in an attempt to obtain the approximate desired economic benefit at such time. Under this likely scenario, the combination of the six month holding period with the tolling provision means that the underlying shares cannot actually be sold for one year following exercise. And if shares cannot be borrowed to sell short, the warrant holder would still be

required to wait six months to achieve the profit desired upon exercise, risking that such profit may vanish or result in a loss. Therefore we suspect that the six month holding period and tolling provisions will fail to ameliorate the need for registration statements or alternatively will force issuers to accept cashless exercise which will deprive them of perhaps desperately needed cash. Perhaps consider permitting tacking of the holding period upon cash exercise of warrants in certain circumstances.

Selling Restrictions

We are in favor of amending the volume, manner of sale and Form 144 filing limitations as proposed. Again, removing such limitations for non-affiliates should not harm or diminish the interests of investors but will assist in increasing liquidity and reducing the cost of capital. We are also in favor of retaining the public information requirement as proposed since this is important for fostering a fair trading market between buyers and sellers. Finally, we agree with the proposal requiring a one year holding period with respect to non-reporting companies. Whereas holding a security for a full year should be sufficient evidence that the intent is not to engage in an unregistered public distribution, at this point shortening to less than one year may sacrifice investor protection as buyers may not have access to sufficient information. Further, providing for this longer holding period should incentivize public companies which are not current in their filings to get and remain current.

For convenience it seems to make sense to combine Form 144 with Form 4, with Form 4 having two sections, one for acquisitions and dispositions by affiliates and another for sales of restricted securities by affiliates. In any case, we think it would be inappropriate to require on Form 144 (or in the equivalent location on another form) that the seller disclose any hedging transactions (except as currently required under Section 16 of the Securities Act and rules thereunder). Many investment funds justly consider their trading and positions proprietary and confidential, the disclosure of which could prove adverse to such funds.

We believe the elimination of volume limitations, manner of sale requirements and Form 144 filings requirements for non-affiliates will likely enhance the practical usage of Rule 144 as it will significantly diminish the time, expense and effort associated with selling under Rule 144 in terms of complying with the evidentiary requirements of brokers, transfer agents and issuers. In this regard, we suggest adding a provision that legends may be removed (such that shares may be deposited in brokerage accounts electronically) following completion of the six month (as proposed) holding period by a non-affiliate in order to streamline transaction processing. We anticipate a discrepancy of views on this matter by transfer agents, issuers and practitioners, so we believe a codification of a position by the Commission would be very useful.

Affiliate Status

With the proposed amendment it will become more important to determine whether a holder is an affiliate of the issuer. We are concerned that, in its current form, the proposed Rule may leave a very grey area in which the SEC staff may deem PIPE investors to be affiliates of the issuer, thus depriving them of some of the flexibility of amended Rule 144 (similar to the recent staff interpretations involving Rule 415). We suggest a safe harbor definition for "affiliate" (in addition to the current definition), such that if an investor meets this definition it knows it can rely on the Rule 144 provisions as a non-affiliate. At the very least, we believe an investor who (1) has no material relationship with the issuer other than being a security holder of the issuer, (2) is not a broker-dealer, and (3) does not beneficially own more than 10% of the issuer's publicly traded equity securities (as determined in accordance with Regulation 13D-G under the Exchange Act), should be deemed to be unaffiliated with the issuer.

Other Disclosures

In response to the Release's query as to what disclosures concerning restricted securities would be useful to the market, we suggest that in the Form 8-K filed disclosing the issuance of restricted securities (including securities convertible into restricted securities), the issuer should specify the exact date on which such securities are permitted to be resold publicly under the six month holding period of Rule 144.

We anticipate that with the enactment of the proposed amendments, the number of registration statements filed for the resale of restricted securities may fall (and will fall dramatically if the holding period is shortened to less than six months), thus saving time and resources of both issuers and the SEC staff. However, when restricted securities are registered for resale, it may be useful to the market for the staff to file its effectiveness notice via EDGAR approximately one day before effectiveness specifying the exact time such registration statement will be declared effective. This will enable both buyers and sellers to have knowledge of the effective time in advance, diminish any advantage of holders of restricted securities from knowing about the pending increased liquidity in the marketplace, and clarify any grey area as to whether knowledge of the pending effectiveness constitutes possession of material non-public information which requires a waiting period (we do not believe this to be the case but are unaware of any staff interpretations on this matter). On the other hand such advance disclosure of effectiveness and consequential liquidity may provide an unfair advantage to holders of freely tradable shares over the holders of the restricted securities being registered for resale.

Closing Short Positions with Restricted Securities

Item A.65 of the Division of Corporate Finance's July 1997 Telephone Interpretations advises that restricted securities which become registered for resale cannot be used to cover short sales entered into before registration effectiveness, since the sale of the restricted securities will be deemed to have occurred at the time of the short sale. We think in light of the extensive amendments being made to Rule 144 this would be the appropriate time to consider an alternative position. The practical result is that, even though after registration the long and short securities are fungible, the investor is required to engage in separate transactions to cover the short position and sell the long position. Also, some would argue that the initial short sale is much different from the sale of the restricted securities due to transaction costs and risks associated with a short position. Although we are not suggesting a resolution here, we think consideration should be made and comments should be sought to weigh the costs and benefits of the staff's position and possible rectifying measures.

Thank you for your consideration. We would be happy to discuss further with the staff any of the comments or suggestions raised in this letter.

Sincerely,

Peter J. Weisman