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July 26, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: Release No. 33-813
File No. S7-11-07

Ladies and Gentlemen:

I am writing to comment on Release No. 33-8813, which proposed significant revisions of Rule 144. First adopted in 1972 and amended several times thereafter, with the most significant changes being made in 1997, Rule 144 is a method to permit the public sale by of restricted securities by both non-affiliates and affiliates of an issuer and of non-restricted securities by affiliates of the issuer. However, in its present form, Rule 144 has limitations which limit the utility of the rule. The proposed amendment to Rule 144 takes significant and positive steps to address these limitations.

This firm represents many companies that raise funds through PIPE financings. During the past seven years, it has been very difficult, if not impossible, for small companies to raise money in the public market. Following many years of public offerings of the so-called dot-coms, when it was relatively easy, perhaps too easy, for small technology companies to go public, there are now virtually no investment bankers who are willing to underwrite a public offering for a small company. The primary source of funds for the growth of both small and larger businesses has changed from retail customers to funds. As a result, it was necessary for the investment community to develop methods of funding other than an underwritten public offering. One method which has become increasingly popular is the PIPE financing. While most PIPE financings are made to companies that are already public, many PIPE financings are made to private companies who become public through a reverse acquisition of a public shell in connection with the PIPE financing. These companies file, four business days after closing, an 8-K report which contains the information required for registration under the Securities Exchange Act of 1934 generally on a Form 10SB.

During the past year, the Commission has modified the way it applies Rule 415, which had the effect of limiting both the number of securities that can be registered in a Rule 415 offering and the period of time which must elapse between the effective date of the initial registration statement relating to a financing and the date on which a follow-up registration statement covering the securities issued in the same financing can be filed. This change has made it more difficult for smaller companies to raise money.

In conferences earlier this year, representatives of the staff of the Commission have stated that one possible solution to these problems would be a modification of Rule 144. A modification of Rule 144 is in the interest of all parties – the financing source, the issuer which requires the financing and the investors. The proposed modifications of Rule 144 address many of these concerns.

The reduction of the holding period for non-affiliates to six months is reasonable for reporting issuers. By holding the securities for the six-month holding period, the investor is bearing the economic risk of ownership for a significant period. Further, the requirement that the issuer be current in its filings under the Exchange Act during the period from six months to one year is reasonable. Since this change would increase the liquidity of the securities, it could both make capital more available and decrease significantly the cost of raising capital in that it would not be necessary to file a registration statement for common stock or convertible securities that are issued in a financing. I note that this change will not affect the need to register warrants if the warrants do not contain a cashless exercise provision.

In this regard, currently, financings typically include a requirement that a registration statement be filed and be declared effective based on a schedule set forth in a registration rights agreement. The failure to meet this schedule frequently results in the payment of liquidated damages in cash and/or the issuance of additional securities. It is likely that investors may include covenants that the issuer be current in its filings as well as provisions for enforcing the covenants, which may include a liquidated damages provision. Section (d) of Rule 144 should be clarified to provide that the holding period for these liquidated damages shares should be the same as the holding period for the shares which are subject to the registration rights agreement.

The proposed revision of Rule 144 takes practical steps in integrating the reporting requirements of the Exchange Act and the registration requirements of, and exemptions under, the Securities Act. Thus, it would be possible for an investor to make an investment in a private company and require the company to file a registration statement on Form 10 or 10-SB at or promptly after the closing. Upon the effectiveness of the Exchange Act registration statement, the issuer will become a fully reporting company and commencing 90 days after the registration statement becomes effective or six months after the investment is made, the investors would be able to sell their securities under Rule 144 (subject to Rule 15c2-11 of the Exchange Act). This structure is consistent with the policy objective of the Commission to promote investments.

The provisions relating to cashless exercises, conversions and exchanges and holding company formations codify the Commission's present position. However, the proposed language in Section (d)(3)(ix)(A) should be revised to include a reincorporation of the issuer in a different state. This change can be effected by adding the words "or in a reincorporation which changes the state of incorporation of the issuer" at the end of the clause.

As noted in the release, the provisions of Section 3(d)(xi) reintroduces a concept that was eliminated when the holding period was shortened and tacking of holding periods was permitted. Since Rule 144 has been working effectively without the tolling provision, I question the need to reinstitute the provision at this time. Since holding periods are tacked, tracing the short sales and hedging transactions through several prior purchasers who may have no relation with each other or with the seller seems to be an undue burden on both the seller and the broker. It would be necessary to rely on representations from one or more persons with whom neither the seller nor the broker may have any relationship. I would recommend that the Commission not include Section 3(d)(xi) in the amended rule, with the caveat that if the facts show that there is an abuse of the rule by short sales and hedging transactions, the Commission may decide to reintroduce it at a later date. However, if the Commission determines to include the proposed Section 3(d)(xi), the rule should be clear that it is limited to the hedged portion of the restricted securities, not all of the securities.

Section (d)(3)(xii) of the proposed rule deals with shares of an issuer that had once been a shell but is now a reporting company which is not a shell. It provides that securities of such an issuer are deemed to have been acquired at the later of (a) the date of acquisition from the issuer or from an affiliate or (b) the date the "Form 10 information" is filed with the Commission. As a preliminary matter, for purposes of Rule 144, the Form 10 information should be deemed filed when the filing is made with the Commission. This date is readily ascertainable from the Edgar website. Because the staff of the Commission may issue comments on the Form 8-K which includes the Form 10 information or on the Form 10 or 10-SB, the rule should be clear that the applicable date is the date on which the initial filing is made with the Commission as reflected on the Commission's Edgar website.

The staff of the Commission has taken the position that any shares that are acquired from a shell company that is not engaged in any business activities cannot be sold pursuant to Rule 144 or 144A and can only be sold pursuant to a registration statement. This position was initially expressed in a letter from Richard K. Wulff, chief of the SEC's Office of Small Business, to Ken Worm of NASD Regulation, Inc. Although the Wulff-Worm letter related to specific sets of facts, it has been interpreted by the staff to apply to any purchase of shares in a company which is not engaged in any business activity at the time the shares are purchased. Thus, any shares that are purchased from a shell that is not engaged in any business activities can never be sold pursuant to Rule 144. The proposed Section (i)(2) permits such holders to sell their shares pursuant to Rule 144 under the conditions set forth therein. This provision clarifies the rights of sellers who purchased their shares in the shell at the time it was a shell. By treating the date of purchase as the later of the actual date of purchase or the date the Form 10 information is filed, the Commission is eliminating the possibility that these stockholders would be able to dump the stock that they purchased when the issuer was a blank-check company immediately after the shell is sold.

However, this provision is not appropriate for investors who invested in the issuer when it was engaged in an actual business. The fact that the issuer, at a time subsequent to the investment, is no longer engaged in an active business should not result a change in the holding period for those investors, particularly non-affiliate investors. They purchased shares in a company at a time when it was engaged in a business and was not a blank-check shell and they should be able to commence their holding period on the date of actual purchase. This proposed provision acts as a double economic penalty for those investors. Many of the blank-check shells were not organized as blank-check shells. Rather they were businesses that failed, with the result that the issuer was no longer engaged in the business. However, because of a change of circumstances, the company in which these investors made their investment is no longer engaged in the same business as it was when the investment was made. These investments may have been made when the issuer required funds, possibly in an unsuccessful attempt to turn the business around. Unfortunately, because the issuer was not successful in developing the business as contemplated, the investors may have lost most of the value of their investment. By requiring them to wait until six months after the Form 10 information is filing, is, in effect, being penalized a second time. The rule should distinguish between (i) sellers who acquired their securities at the time when the issuer was not engaged in any business and (ii) sellers who acquired their securities when the issuer was engaged in a business.

The proposed rule may make it more difficult for companies to raise money in a turn-around situation, since the investors may be concerned that, if the turnaround is not successful, and the company has to effect a reverse acquisition with a profitable company in order to avoid bankruptcy, their ability to use Rule 144 to sell their shares after the reverse acquisition would be restricted.

Further, the proposed rule can effectively convert shares that are not saleable pursuant to Rule 144 into shares that cannot be sold under Rule 144. Consider the following example. In June 2005, an investor purchased stock in a private placement in a public company that was engaged in an active business and did not come within the definition of a shell. Today the investor could sell the shares pursuant to section (k) of Rule 144. If the company was not successful and became a blank-check shell, the investor today could still sell his shares without restriction pursuant to section (k) of Rule 144. However, on the day the proposed rule comes into effect, the investor's holding period would commence when the Form 10 information is filed with the Commission, and the earliest he could sell his shares would be six month thereafter.

The rule also does not appear to distinguish between control securities in a shell corporation and securities that are held by non-affiliates. We would recommend that the restricted securities that are not control securities be saleable pursuant to Rule 144 six months after the date of purchase, but not earlier than 90 days after the Form 10 information is filed with the Commission.

The definition of a shell, both in Regulation 405 under the Securities Act and in section (i)(1)(i) of the proposed Rule 144, do not distinguish between a blank-check shell and one that is a shell because it is not generating much business. A start-up company that is actively engaged in business, but not generating significant revenue and which has raised modest funds for the development of its business could come within the definition of a section (i)(1)(i) issuer. The Commission should clarify, either in section (i)(1)(i) or in the introductory note, whether the provision is intended to apply to both (i) a start-up business which technically meets this definition and (ii) a company that is clearly a blank-check shell.

The filing of a Form 144 by affiliates should be eliminated. The information can be included in a Part C of Form 4, which would refer to actual transactions. The filing of a Form 144 does not provide exact information as to the number of shares being sold or the date on which the shares are sold. Frequently, a Form 144 is filed before the sale is made and may cover more shares than will actually be sold. With the current filing requirements for Form 4, there is no need for an extra form to be filed with the SEC.

Finally, the proposed rule does not consider or include any provisions concerning the inability of stockholders of a company that is traded on the OTC Bulletin Board to use the average weekly trading volume for determining the maximum number of shares which may be sold. Information as to volume and price are available for OTC Bulletin Board issuers, and, in order to maintain a listing on the OTC Bulletin Board, the issuer must be current in its annual and quarterly reports. In view of these factors, section (e)(1) of Rule 144 should be amended to include stocks trading on the OTC Bulletin Board.

The comments in this letter are intended to focus on the need to amend Rule 144 to enhance the ability of issuers to raise necessary capital while preserving the interests of the investing pubic. I would be available to speak or meet with the staff of the Commission to discuss these comments further.

Respectfully submitted,

Asher S. Levitsky P.C.

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