



August 10, 2004

VIA EMAIL

Jonathan G. Katz, Secretary  
U.S. Securities & Exchange Commission  
450 Fifth Street, N.W.  
Washington D.C. 20549

Re: File No. S7-27-04; Ownership Reports and Trading by Officers, Directors, and Principal Holders

Dear Mr. Katz,

The Securities Industry Association (“SIA”)<sup>1</sup> is pleased to offer its comments in response to the above-referenced rule proposal. The proposed amendments to Rules 16b-3 and 16b-7 are intended to clarify the regulatory conditions that apply to exemptions from Section 16(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) which provide an issuer (or shareholders suing on behalf of an issuer) a private right of action to recover short swing profits realized by insiders. SIA strongly supports the proposed amendments and believes they should be approved.

SIA agrees with the Commission that the amendments are required to eliminate the uncertainty generated by the *Levy v. Sterling* opinion of the U.S. Circuit Court of Appeals for the Third Circuit.<sup>2</sup> In that opinion, the Court read rules 16b-3 and 16b-7 to require satisfaction of conditions that are neither contained in the text of the rules nor intended by the Commission. The resulting uncertainty regarding the exemptive scope of these rules has made it difficult for issuers and insiders to plan legitimate transactions. SIA’s member firms are actively engaged in providing advice and execution services for

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<sup>1</sup> The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 780,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated an estimated \$209 billion in domestic revenue and \$278 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com).)

<sup>2</sup> 314 F.3d 106 (3<sup>rd</sup> Cir., 2002), *cert. denied*, *Sterling Holding Co. v. Levy*, 124 S. Ct. 389 (U.S. Oct. 14, 2003).

issuers and insiders in connection with these transactions and it is vitally important that settled expectations regarding the legality of such transactions be reaffirmed.

SIA believes the proposed amendments would accomplish the SEC's goal of clarifying the exemptive scope of Rule 16b-3 and 16b-7 as the SEC originally intended the rule to apply and be consistent with their previously expressed views. Without such clarification, SIA believes that insiders may be exposed unnecessarily to significant potential costs to the extent that a private action under Section 16(b) results in the recovery of short swing profits in connection with a transaction that the rules clearly intended to exempt.

SIA appreciates the opportunity to comment on the proposed amendments and would be pleased to answer any questions regarding the opinions expressed in this letter. If you have any questions or would like to discuss our comments further, please contact me at 212-608-1500.

Sincerely,

Scott Kursman  
Vice President &  
Associate General Counsel

C's: Alan L. Beller, Director  
Anne Krauskopf, Senior Special Counsel