

**VIA ELECTRONIC MAIL**

August 17, 2004

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

Attention: Jonathan G. Katz, Secretary

Re: Ownership Reports and Trading by Officers, Directors and Principal Security  
Holders  
Release Nos. 34-49895; 35-27861; IC-26471  
File No. S7-27-04

Ladies and Gentlemen:

We submit this letter in response to the Securities and Exchange Commission's request for comments on Release Nos. 34-49895; 35-27861; IC-26471 dated June 21, 2004. We support the Commission's efforts to clarify the exemptive scope of Rules 16b-3 and 16b-7 under the Securities Exchange Act of 1934 in light of the uncertainty caused by the ruling in *Levy v. Sterling Holding Company, LLC*, 314 F.3d 106 (3d Cir. 2002), *cert. denied*, *Sterling Holding Co. v. Levy*, 124 S.Ct. 389 (U.S., Oct. 14, 2003), which, as other commentators have noted, has made it difficult for insiders to rely on prior interpretations of Rule 16b-3 and 16b-7 in planning legitimate transactions. We respectfully urge the Commission to act promptly on these proposals and offer the following comments in relation to its proposals to clarify the exemptive scope of Rule 16b-7.

The addition of the term "reclassification" to the text of Rule 16b-7 and the inclusion of new paragraph (c) will specifically address the misinterpretation of the rule in the *Levy* decision. We suggest, however, that the Commission avoid any further uncertainty regarding the applicability of Rule 16b-7 by amending the rule to include not only mergers, reclassifications and consolidations, but also all other substantially similar corporate reorganization transactions. So, for example, plans of reorganization and statutory share exchanges should also be specifically identified as exempt transactions in Rule 16b-7. In addition, the rule or a note thereto should also clarify that equivalent transactions with different names governed by non-U.S. law -- such as amalgamations or schemes of arrangement -- are covered by the rule. Like mergers, reclassifications and consolidations, these additional types of transactions do not

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involve significant changes in the corporation's business or assets and do not provide for any potential for speculative abuse that Section 16(b) of the Securities Exchange Act of 1934 was designed to address. In addition, these transactions provide stockholders with continued ownership of the corporation, albeit in a different form, and treat all members of the affected classes equally. We believe that the explicit inclusion of these types of transactions would be consistent with prior Staff interpretations of Rule 16b-7 and would avoid future misinterpretation of the rule in the courts. See, e.g., Release No. 34-18114, Q. 142 (1981); *Varity Corp.*, October 15, 1991 and *Manpower plc*, March 14, 1991.

Sincerely,

/s/ Joshua Ford Bonnie

Alan D. Schnitzer  
Joshua Ford Bonnie