RICHARDSON PATEL LLP

Los Angeles • New York

September 4, 2007

Securities & Exchange Commission
100 F Street, NE
Washington, D.C. 20549
Attention: Nancy M. Morris, Secretary

Re: File No. S7-11-07, Securities and Exchange Commission Release No. 33-8813, RIN 3235-AH13, Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates

Ladies and Gentlemen:

Richardson & Patel LLP is a corporate law firm with offices in Los Angeles, California and New York, New York. We represent primarily small business issuers engaging in corporate finance transactions and in periodic reporting obligations under the rules and regulations of the Securities and Exchange Commission (the "Commission").

We are securities counsel to over 100 publicly-held, reporting companies. In connection with this representation, we counsel companies in various public offering structures, including underwritten initial public offerings, reverse merger transactions, initial registrations, and secondary offerings and registrations. We have advised issuers and finance organizations on numerous PIPE transactions, as well as mergers and acquisitions. The depth and breadth of our practice allows us to have first-hand knowledge of the legal and business concerns of our clients and the framework of the public markets with respect to small business issuers.

We wish to commend the Commission on the various proposed changes to Rule 144 and we are certain that the vast majority of the proposals will be welcomed by small business issuers. We support the Commission in its efforts to facilitate capital formation for small companies and reduce the costs associated with their capital raising and investor liquidity options, both in the rule proposals concerning Rules 144 and 145, as well as in the complimentary proposals concerning the availability of Form S-3 registration, changes to Regulation D and modified disclosures for small business issuers.

We offer the following comments, based in part on our discussions with our clients concerning the proposed rules.

10900 Wilshire Blvd. Suite 500, Los Angeles, CA 90024
T 310 208 1182 • F 310 208 1154

1. Shortening of Rule 144 Holding Periods and Streamlined Compliance; Codification of Staff Position on Cashless Warrant Exercises; and Distinctions between Cashless and "For Cash" Warrant Exercises.

Shortening of Rule 144 Holding Periods and Streamlined Compliance

Under the proposed amendments, the holding period under Rule 144 for "restricted securities" of issuers subject to the reporting requirements of the Securities Exchange Act of 1934 (the "Exchange Act") would be shortened to six months for both affiliates and non-affiliates. This proposed holding period, however, would be subject to a tolling provision that would extend the holding period for up to an additional six months by the amount of time a holder of such securities was engaged in a hedging transaction. We address our views on the tolling provision, separately, below.

We believe the shortened holding periods facilitate the Commission's primary purpose in the proposed amendments, which is to increase capital formation and reduce the costs of capital to issuers. Reducing the holding periods achieves greater liquidity and makes capital investment more attractive without sacrificing the safeguards provided in Rule 144. We submit that shortening the holding periods goes hand-in-hand with other aspects of the proposed amendments which seek to streamline the compliance aspects of Rule 144, including elimination of the manner of sale requirements in several circumstances and modification of the volume limitations. All of the foregoing elements are consistent with the goals of providing greater issuer capital opportunity and investor liquidity, both of which are necessary to grow the investment environment for small business issuers.

Codification of Staff Position on Cashless Warrant Exercises

We also applaud the Commission for its efforts to clarify "staff positions" by codifying such positions into proposed regulations. We address here the staff position concerning the "tacking" of holding periods for so called "cashless" exercises of warrants and options. The Commission has proposed codifying the position that, upon a cashless exercise of warrants or options, the newly acquired underlying securities will be deemed to have been acquired when the corresponding warrants or options were acquired, even if the warrants or options did not originally provide for a cashless exercise by their terms. However, if the terms of the warrants or options are amended to permit cashless exercise, and in connection with such amendment, the holder provides consideration other than securities of the issuer, then the securities received on the cashless exercise of such warrants or options will be deemed to have been acquired on the date the warrants or options were amended.

Distinctions between Cashless and "For Cash" Warrant Exercises

While we agree and support the Commission's determination to codify the staff position on "purely cashless" warrant and option exercises, we note that the Commission continues to draw a distinction in tacking treatment in the context of an exchange of

securities and tacking in the context of a "for cash" or "mixed" cash and securities warrant or option exercises. This distinction is drawn out in the Commission's express denial of tacking where consideration other than securities is provided to amend the terms of a for-cash warrant or option to convert such securities to a cashless warrant or option.

We believe that eliminating the distinction on tacking treatments between "for cash" and "cashless" exercises is critical to the Commission's stated purpose in the proposed amendments – which is to facilitate capital raising and reduce the costs of capital. Moreover, we find the distinction harmful to the facilitation of such activities because it deprives issuers of a ready source of cash (in the form of exercises for cash) since the Commission's rules would continue to chill cash exercises unless such shares are then registered – adding cost and expense to obtain the capital infusion. Denying the tacking of holding periods for cash warrant exercises is a strong disincentive to investors to exercise warrants for cash.

One of the fundamental elements of Rule 144 is the determination of when investors have assumed the economic risks of investment and in turn, whether a sufficient period of time has elapsed between that date and the date of sale in order to ensure such persons are not acting as underwriters. Purchasers who purchase with a view towards distribution cannot avail themselves of the safe harbor of the Rule. Investors who have purchased stock and warrants (or units of securities) have not purchased in a transaction with a view toward distribution. In that scenario, investors have purchased restricted securities with limited liquidity.

Consistent with the Commission's overall purpose in these amendments, we propose that the securities obtained upon the cash exercise of warrants, which were acquired in private placements of restricted securities, be accorded the same tacking treatment as securities issued in cashless exercises. In both cases, regardless of the method of "payment" upon exercise, the investor assumed the risk of the entire investment at the time of the private placement and cannot be deemed to be exercising or acquiring shares with a view to distribution if a reasonable period of time has transpired between the date of acquisition of the warrant (or option) and the date of exercise. We note there is a sharp difference between employee options (which are not acquired for cash or with any investment risk) and warrants acquired in a private placement where the warrant terms are heavily negotiated and considered an important part of the investors' purchase decision. In essence, unlike employee options, warrants purchased in a private placement are a part of the investor's investment decision and risk, which is assumed at the time the private placement closes.

We would request that the Commission eliminate the unfounded distinction between "for cash" and "cashless" warrant exercises and afford tacking on cash exercises where the warrant or option has been held for a six month period, consistent with the treatment of cashless exercises and the new holding periods proposed under the amendments. We believe such parameters would afford increased market efficiency, increased available cash to issuers, reduced liquidity costs and overall further the Commission's purposes in easing capital formation for small business issuers.

Finally, we note that the Commission (and the staff) has provided no support for the unstated position that holders who exercise for cash do so with a view toward distribution, whereas holders who exercise on a cashless basis do not. The Commission has provided little guidance as to why it continues to distinguish between cashless and for-cash exercises in the matter of tacking and analysis of investment risk. Admittedly, the Commission is following the plain text of Rule 144(d)(3)(ii). However, given the Commission's interest in promoting capital formation and capital raising efficiencies, it seems logical to extend the staff's tacking position on cashless warrant exercises to for-cash warrant exercises. In both circumstances, valuable consideration is being given for the exercise, and we see no logical reason to conclude that investors who "pay" for the exercise in securities are less likely to do so with a view toward distribution or that they have not renewed their investment risk at the point of exercise.

Accordingly, we propose that the Commission amend the new rule proposals to eliminate the distinction between tacking treatment in the cases of cashless and for-cash warrant exercises and afford securities issued upon the cash exercise of warrants or options the same tacking provisions as securities issued upon a cashless exercise of warrants or options.

2. Tolling of the Holding Period in Connection with Hedging Transactions; Request for Further Clarification on Shareholder and Broker Representations on Hedging Transactions.

Tolling of the Holding Period in Connection with Hedging Transactions

The Commission has proposed a tolling provision whereby the minimum holding period (six months in the case of the proposed amendments) applicable to restricted securities of a reporting company under the Exchange Act would be tolled while the holder of the securities (or the previous owner of the securities) is engaged in certain hedging transactions, e.g., equity swaps, short sales and other such transactions, involving the securities. The proposed tolling provision would not apply if the holder holds the securities for a period of at least one year, regardless of any hedging activity by the holder (or the previous owner of the securities) during such one-year period. This tolling period contradicts the Commission's purpose in facilitating liquidity by making it more difficult (not easier) to sell restricted securities.

In the release, the Commission has expressed a concern that hedging transactions shift the economic risk of the investment away from the security holder with respect to restricted securities under Rule 144, making it more difficult to determine if the holder has held the security for investment purposes and not with a view toward distribution. The Commission has stated that the concern regarding hedging is particularly acute if the holding periods are shortened to six months, as proposed. Further, the Commission believes that the shortened holding period would itself make hedging more economically attractive and prevalent.

We respectfully disagree that hedging transactions transfer economic risk entirely or that hedging harms issuers' ability to raise new capital. We note that hedging transactions are completely separate transactions undertaken by a holder and a third party. They entail costs and risks for the holder. The structure and economics of various hedging transactions are irrelevant to the question of whether the investor assumed a risk of investment in the issuer's securities at the time the private placement closed, or whether, by virtue of engaging in hedging transactions, the investor has purchased with a view toward distribution or otherwise intends to act as an underwriter. These are the fundamental inquiries of Rule 144 (as discussed above) and the legal analysis is no different with respect to investors engaged in hedging transactions.

In essence, the perceived mitigation of risk by hedging is just that - perceived reduction of risk. There is in fact little reduction of risk since the restricted securities are already purchased and paid for by the investor. Regardless of whether such after market transactions are an economic success to the investor, the investor continues to bear the risk of the original purchase of the securities, as well as any additional risks or costs associated with the hedging transaction. The hedging transactions have no direct bearing on issuers' abilities to raise new capital. However, in light of the Commission's proposals, if investors are "penalized" on the holding periods for engaging in hedging transactions, then issuers may in fact lose such persons as potential investors – which contradict the overall intent of the proposals. At best, we propose that any tolling provisions enacted by the Commission be limited to securities that are the subject of hedging and not the entire holdings of a hedging investor.

Request for Further Clarification on Shareholder and Broker Representations on Hedging Transactions

In connection with the proposed tolling provision, the Commission is proposing additional changes to Rule 144 to provide that Form 144 filings include information regarding any short position or put equivalent position held with respect to the restricted securities prior to their resale, and add the requirement that brokers inquire into the existence and character of any short position or put equivalent position entered into with regard to securities with a holding period of less than one year.

As attorneys who frequently counsel issuers and investors on matters of holding, selling and tacking of restricted securities, and who are often required to issue legal opinions concerning the sale of restricted securities, we ask that the Commission provide further clarification and guidance as to the required Form 144 disclosures and broker inquiries. Since we must rely upon the disclosures made by shareholders and brokers in rendering advice and issuing opinions, we ask that such disclosures be as detailed as possible, and that substantiation of the disclosures be provided, if needed. While we understand that questions of reliance on third party representations are a matter of legal opinion practice and that applicable bar associations will need to further address these matters, we request that the Commission clearly delineate the type of information which sellers must disclose on a Form 144, the depth or process of inquiry brokers must undertake, and the substance of the disclosures and conclusions that must be made by

both sellers and brokers before restricted securities that have been the subject of hedging transactions can be sold under Rule 144.

In addition, we ask that the same types of clarification be made as to whether affiliates of a hedging seller are similarly restricted by the tolling provisions and subject to the same Form 144 disclosures. We make the same request with regard to the "aggregation" analysis of multiple, affiliated sellers.

We submit that there is much needed additional clarification and guidance to be provided by the Commission on the compliance mechanics of the tolling provisions and sale of the hedged securities. Absent such clarification and guidance, we anticipate that "pockets" of securities practice – in terms of what disclosures and broker inquiries and representations are adequate – will develop, creating inconsistency and lack of reliability and efficiency in selling restricted securities that are subject to hedging transactions. Ultimately, that lack of efficiency in the sale process will hamper, not facilitate, investor interest in small business issuers by muddying the waters on sales of restricted securities held (or to be acquired) by investors who are likely to enter into hedging transactions. This complication is wholly inconsistent with the Commission's purpose in the amendments to promote capital raising, to lower costs and to create greater capital formation efficiencies in the public markets.

Thank you for your consideration of our comments in this matter.

Respectfully submitted

RICHARDSON & PATEL LLP

/s/ Nimish Patel, Esq.
/s/ Jennifer Post, Esq.
/s/ Ayla Nazil, Esq.