Fried, Frank, Harris, Shriver & Jacobson (London) LLP

99 City Road
London EC1Y 1AX
Tel: +44.20.7972.9600
Fax: +44.20.7972.9602
www.friedfrank.com

Direct Line: +44 020 7972 9624
Fax: +44 020 7972 9602
wiedeka@ffhsj.com

September 4, 2007

By E-Mail to: rule-comments@sec.gov

Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street N.E.
Washington, D.C. 20549-1090

Re: Release Nos. 33-8813 (the "Release"); File No. S7-11-07

Dear Ms Morris:

We appreciate the opportunity to comment on the proposed changes set forth in the Release regarding the regulation of public resales of restricted and control securities under Rule 144 and securities received in business combination transactions under Rule 145. Our comments are based on our experience representing issuers, selling securityholders and other market participants, although the comments are solely our own and are not intended to express the views of our clients.

We are highly supportive of the efforts of the Commission to simplify the requirements for resale of unregistered securities and to codify existing interpretive positions under Rule 144. We also support the Commission's proposal to eliminate, in most circumstances, the presumptive underwriter provision of Rule 145. In particular, we believe the proposed changes to Rule 144 will facilitate capital raising by enhancing the liquidity of securities acquired on an unregistered basis without compromising investor protection.

The Commission requested comment on a number of issues and proposals highlighted in the Release. Following are our comments on several of those issues, as well as some suggestions for your consideration.

Rule 144 holding period

We believe that the proposal in the Release to shorten the Rule 144 holding period to six months in the case of "reporting issuers" and one year in all other cases is appropriate in the circumstances of today's market. Consistent with the Commission's stated objective of setting a holding period that indicates assumption of the economic risk of an investment in unregistered securities, but does not overly burden the resale process by going further than necessary, we would urge the Commission to re-assess

the holding period requirement periodically in view of continuing market developments.

Include voluntary filers as reporting issuers

The Release proposes differentiating between "reporting issuers" and all others in setting holding period requirements, with Rule 144 resales permitted after six months for securities of reporting issuers (subject to the satisfaction of the other requirements of the Rule) compared to one year for other issuers. Reporting issuers are those that are, and have been for at least 90 days preceding the sale, "subject to the reporting requirements of section 13 or 15(d) of the Exchange Act." We propose that voluntary filers, typically issuers that file periodic reports with the Commission pursuant to contractual rather than statutory obligations (for example, pursuant to indenture covenants), should also be considered reporting issuers for this purpose. This would permit Rule 144 resales of the securities of such issuers commencing six months after purchase, but only if the other conditions of Rule 144 were also satisfied (*i.e.*, holding period taking account of any hedging activities, adequate current public information and, in the case of sales by affiliates, volume limitations and any applicable manner of sale and filing requirements). We believe that periodic reporting, whatever the source of the obligation, should be the key factor in identifying issuers as to which the market has sufficient information to permit resales after a six-month holding period.

Form 144 filing

We support the Commission's proposal to eliminate Form 144 filing requirements for non-affiliates. We believe that the current filing requirement imposes costs on non-affiliates with essentially no corresponding benefit to the market or other investors.

The Release requests comment on the required timing of filing of Form 144 and the possibility of coordinating Form 144 and Form 4 filings, given the significant overlap both in the content of the forms and the persons required to file them. Under existing rules, Form 144 is required to be filed concurrently with placing a sale order with a broker or executing a trade with a market maker in reliance on Rule 144. This can result (and, in the context of 10b5-1 plans, often does result) in a filing being required considerably in advance of any actual trading. For this reason, Form 144 filings can to some degree mislead the market, in that they suggest that a securityholder is selling even though no sale may actually occur. In contrast, all other reporting of securities transactions by significant securityholders and corporate insiders is of completed transactions only (in the case of Section 16 filings, within two business days after the trade, and in the case of Schedule 13D filings, within five business days following the acquisition of a 5% position and "promptly" following any material change thereafter). We do not believe that any policy interest is served by requiring advance notice to the market of an intention to sell. Given the volume and other limitations applicable to affiliate trades under Rule 144, it does not seem likely that

such disclosure results in significant information to the marketplace. We agree that applying the same two business day deadline that applies to Form 4 would be more appropriate.

We also agree that coordinating Form 144 and Section 16 filings would benefit many sellers that are subject to Rule 144 as affiliates of the issuer and subject to Section 16 as directors, officers or 10% shareholders. One approach may be to amend Form 4 to add an optional Rule 144 continuation sheet, capturing the information required under Rule 144 that isn't otherwise presented in Form 4. This continuation sheet would be included for Form 4 reporting of Rule 144 sales but otherwise omitted. This may create less confusion than trying to integrate Rule 144 information into the Form 4 itself, given that many transactions are reported on Form 4 for which Rule 144 information is irrelevant.

Conform the "distribution compliance period" for Regulation S Category 3 securities

Under current Rule 903(b)(3)(iii) of Regulation S, equity securities of domestic issuers (as well as other Category 3 securities) are subject to a one-year distribution compliance period. This requirement was put in place by the Commission in 1998, to parallel a new one-year holding period for restricted securities under Rule 144.[1] The Release requests comment on whether the distribution compliance period for reporting issuers should again be conformed, to align with the proposed six-month holding period for such issuers under Rule 144. We believe such an amendment to Regulation S would be appropriate.

The policy rationale that underlies the Regulation S distribution compliance period is broadly the same as that underlying the Rule 144 holding period—namely, preventing the unregistered distribution of securities in US markets by requiring that a sufficient period of time elapse between a placement of securities that is exempt from Securities Act registration and resales of those securities in the US markets, so that it is clear that the initial purchaser has assumed economic risk with respect to the securities or that the securities have "come to rest." In the Release, the Commission notes that a holding period of six months "is a reasonable indication that an investor has assumed the economic risk of investment." This should be equally true of securities acquired under Regulation S as it is of those placed domestically. If the distribution compliance period for Category 3 were not conformed, resale restrictions would vary depending on where in the world the securities were originally sold.

Moreover, the stated rationale for proposing an abbreviated Rule 144 holding period is to increase the liquidity of privately sold securities and decrease the cost of capital for reporting companies without compromising investor protection. The

---

1 As noted in the adopting release, "[t]he distribution compliance period applicable to issuers and distributors under Rule 903 will be extended to one year, rather than the the proposed two years, to align Regulation S more precisely with the Rule 144 resale restrictions." Rel. No. 33-7505, Feb. 17, 1998.

Commission notes that "the proposed amendments could enable companies to raise capital more often through the issuance of securities in unregistered transactions, such as offshore offerings under Regulation S . . ." The amendments will not have the desired effect as to potential transactions under Regulation S for Category 3 securities unless the distribution compliance period is conformed to the Rule 144 holding period.

Finally, the reasons cited by the Commission for aligning the distribution compliance period with the Rule 144 holding period in 1998 are still apposite: the distribution compliance period is unnecessary once limited resales are permitted under Rule 144, and could be confusing to administer if it covered a longer period than the Rule 144 holding period.

Resales of securities acquired in Section 3(a)(10) transactions

We support the Commission's proposal to eliminate, in most instances, the presumptive underwriter provisions of Rule 145. We believe that this change should give rise to a corresponding change in the treatment of resales of securities acquired in transactions exempt from Securities Act registration pursuant to Section 3(a)(10), based on a court determination of fairness. The Commission's current interpretive position is that affiliate resales of such securities must comply with Rule 145(d). To align with the proposed changes in the scope of Rule 145, we propose that resales of securities acquired in Section 3(a)(10) transactions—or at a minimum, business combination transactions structured in reliance on Section 3(a)(10)—should not be required to comply with Rule 145(d) unless Rule 145 would have applied at the time of the Section 3(a)(10) transaction (broadly, if any constituent company were a shell company at the time of the transaction). Otherwise, the resale of securities acquired in a business combination structured as a "scheme of arrangement" (a court-approved restructuring mechanism found under the laws of the United Kingdom and many Commonwealth countries) or otherwise in reliance on Section 3(a)(10) would be subject to more stringent resale restrictions than an identical transaction structured as a tender offer or merger.

We appreciate your consideration of our comments. Please contact the undersigned if you have any questions about or require clarification of our comments.

Very truly yours,

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

By: /s/ Karen C. Wiedemann
Karen C. Wiedemann