SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

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VIA E-MAIL (rule-comments@sec.gov)

September 19, 2007

Ms. Nancy M. Morris, Secretary
United States Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-11-07

Dear Ms. Morris:

The Society of Corporate Secretaries & Governance Professionals is a professional association, founded in 1946, with over 4,000 members who serve more than 3,000 issuers. Responsibilities of our members include supporting the work of corporate boards of directors, their committees and executive management regarding corporate governance and disclosure. Our members ensure issuer compliance with the securities laws and regulations, corporate law, stock exchange listing requirements and the accounting rules. These activities also extend to the determination of affiliate status under Rule 144, the placing and removing of restrictive legends on share certificates, as well as the preparation of Forms 144 and Section 16 filings on behalf of company officers and directors. The majority of Society members are attorneys, although our members also include accountants and other non-attorney governance professionals.

We are writing this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments on Proposed Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates, Release No. 33-8813 (June 22, 2007) [72 FR 128 at 36822 (July 5, 2007)] (the "Proposing Release").

We support the proposals to shorten the holding period, to eliminate the filing requirement for non-affiliates, and to increase the filing threshold, as well as the proposal to eliminate the presumptive underwriter position in Rule 145(c).

Our primary comments concern the questions raised by Part III of the Proposing Release relating to the possible coordination of Form 144 filing requirements with Form 4 filing requirements. In addition, as further discussed below, we believe that the purposes of Rule 144 would be served and unnecessary compliance burdens would be alleviated by further amendments, which we believe would rectify a current problem related to the Form 4 reporting requirements.

The Notice Required by Rule 144(h) Should be Eliminated.

We believe that Form 144 should be eliminated. The reporting requirement bears no substantive relation to elements of a transaction that would be present if there were a distribution. The form is not necessary to ensure or prove compliance with the Rule since the brokers and lawyers responsible for providing clearance letters to transfer agents require sellers to execute detailed representation letters. Further, the form does not provide useful information to the market since it merely discloses *potential* sales. Form 4 reports now provide more timely and accurate information since they report actual sales and are electronically available within two business days of the transaction.

We note that no reporting of sales under Rule 145 is required and we are not aware that this has proved to be problematic.

If a Reporting Requirement is Retained, the Notice Should only be Required of Section 16 Reporting Persons.

We support your proposal to eliminate the requirement that non-affiliates file Forms 144. Transactions by non-affiliates are not of interest to the marketplace. If a requirement to report sales under Rule 144 is retained, we believe it should be limited to persons required to report under Section 16, which would cover the vast majority of affiliates, and obviate the need to create a bright line definition of an affiliate. In order for someone who was not subject to Section 16 to be an affiliate they would have to "control" the issuer through some mechanism other than 10% ownership or a position as an executive officer or director. This would be a rare occurrence.

If Retained, the Notice Should be Streamlined and Combined with or Filed in Tandem with Forms 4.

The purpose of a Rule 144 reporting requirement should not be to establish that the seller complied with the requirements of the Rule. It should not be necessary to publicly disclose all the facts which justify reliance on Rule 144; those details should be left to the representation letters and certificates on which the clearance opinions are based. The purpose of the disclosure should be to alert the market as to the quantity and price of sales of securities under the Rule.

While we do not believe that the Form 144 reporting requirement should be retained, if it is retained the filing deadline should be the same as for Form 4. If the Commission determines that some items of Form 144 should be retained, then those elements should

be combined with Form 4. The revised Form 4 could include additional columns for the information essential to monitoring Rule 144 compliance, and the legend that already accompanies the signature line of Form 4 could be expanded to include a certification that, with respect to any Rule 144 sales, the seller is not aware of material nonpublic information and that the seller's calculation of the holding period took into account any short sales or put equivalent positions. For a seller who is relying on Rule 10b5-1(c), the certification would be as of the date that the seller adopted a written trading plan or gave trading instructions.

Additional Disclosure Should Not be Required under Item 701 of Regulations S-K and S-B.

If the information required to be reported under Rule 144 is streamlined, it should not be necessary to increase the company's reporting requirements under Item 701 of Regulations S-K and S-B. Generally, we believe that Item 701 already captures the essential information that a company's shareholders and the marketplace want to know about securities issued in an unregistered transaction.

If a Rule 144 Reporting Requirement is Retained, a Failure to File in a Timely Manner Should Not Result in Loss of the Safe Harbor.

The Commission has recognized in other contexts that the failure to file a report of sales should not be fatal. Rules 507 and 508 of Regulation D recognize this and provide that penalties should only be imposed where the failure to comply involves a substantive requirement of the rule. Similarly, under Rule 144, the benefits of the safe harbor should only be lost for failure to comply with a requirement of the rule that relates directly to the possibility that the sale could involve an unregistered distribution (e.g. the volume or manner of sale limitations). The filing of Form 144 is a purely ministerial act that bears no relation to the substantive parts of the rule that are intended to ensure that the transaction does not involve a distribution. Loss of the safe harbor is too harsh a penalty for failure to comply with a ministerial requirement.

In Connection with the Modification of Form 4 to Incorporate Form 144, Aggregate Reporting Should be Permitted.

As the Commission has recognized in the Proposing Release, any changes to the filing requirements should be implemented in a manner that avoids confusion to filers and users of the reporting forms. We believe that moving a small number of items from Form 144 to Form 4, in the manner described above, would involve only minimal changes to Form 4 and therefore would avoid unnecessary complexity or confusion. If the Commission amends Form 4 to implement these changes, we believe the Commission also should eliminate an even greater source of confusion in Form 4 reporting by amending the instructions to Form 4 to permit "aggregate reporting" of same-day, same-way transactions.

Currently, Instruction 4(a)(ii) to Form 4 provides that "[e]ach transaction must be reported on a separate line." In a recently published interpretation, the staff took the position that, where a filer's purchases or sales on a particular day are executed a different prices, those purchases or sales may not be aggregated on a single line, but instead must be reported individually, on separate lines of the Form 4. See the Section 16 *Compliance and Disclosure Interpretations*, Q. 133.08 (May 23, 2007). This interpretive position has the effect of requiring filers to report on multiple lines of Form 4 purchases or sales that occur on a single day pursuant to a single market order (e.g., an order to sell 5,000 shares of stock at the market price), solely because the trade is executed at multiple prices that may be as little as a fraction of a penny apart. Often, this means that a filer must report dozens or even hundreds of transactions, sometimes involving only 100 or fewer shares each, to report the execution of a single order. Because the electronic filing system limits each Form 4 to 30 lines per table, a filer must prepare and file multiple Forms 4 to report each separately priced trade.

We believe that reporting each separately priced trade on a separate line is confusing to investors, who must read multiple lines of multiple Forms 4 to understand and gather data regarding what is essentially a single trade resulting from a single investment decision. In addition, separate reporting is burdensome to the persons who must prepare and file the forms. The Commission's current estimate of the time required to complete a Form 4, disclosed on the face of the form pursuant to the Paperwork Reduction Act, is one-half hour. In fact, completing multiple Forms 4 to report a day's transactions may consume several hours.

We believe that the information relevant to investors would be more clearly presented if all same-way transactions that occur on a single day were reported on a single line, with the price column showing the weighted average purchase or sale price and a footnote indicating the range of prices. This change could be accomplished through a simple amendment to Instruction 4(a)(ii) to Forms 4 and 5. A less desirable alternative would be to allow aggregate reporting of all transactions that occur within a range of one dollar (e.g., all transactions from $30.50 through $31.49 could be reported on one line. It would be irrelevant to most users how many shares were purchased or sold at each individual price. In the usual case where a transaction reported on an aggregated basis might be matchable with an opposite-way transaction under Section 16(b), the range of prices reported in the footnote would allow security holders to determine whether a short-swing profit was realized. The number of shares purchased or sold at each price would be determinable by a security holder during the demand and private litigation process contemplated by Section 16(b). Alternatively, the instructions to Form 4 could provide that an insider must provide information about individual transactions upon request by a security holder.

We appreciate this opportunity to share our views with you, and would be happy to provide you with further information to the extent you would find it useful.

Respectfully submitted,

The Society of Corporate Secretaries and Governance Professionals

By: Neila Radin, Securities Law Committee Chairperson

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