

THE SECURITIES AND EXCHANGE COMMISSION PROPOSES REVISIONS TO RULES 144 AND 145 TO SHORTEN THE HOLDING PERIOD FOR AFFILIATES AND NON-AFFILIATES

June 29, 2007

On June 22, 2007, the Securities and Exchange Commission published proposed amendments to Rule 144 and Rule 145 that would shorten the holding period for affiliates and non-affiliates. In particular, the proposed amendments would:

- reduce the holding period under Rule 144 for restricted securities of reporting companies to six months if the shareholder has not engaged in certain hedging transactions. The holding period for restricted securities of non-reporting companies would remain at one year.
- extend the six-month holding period for restricted securities up to an additional six months for the time during which shareholders engaged in certain hedging transactions. The holding period would not exceed one year.
- permit non-affiliates to resell restricted securities freely after one year. Non-affiliates selling restricted securities of reporting companies would be required to resell in accordance with the current public information requirement after the six-month holding period until one year after the acquisition of the securities.

The SEC believes that revisions to the holding periods will help increase the liquidity of privately-sold securities

and decrease the cost of capital for companies while maintaining investor protection. As noted in the proposing release, the SEC anticipates that the amendments "could enable companies to raise capital more often through the issuance of securities in unregistered transactions, such as offshore offerings under Regulation S or other transactions not involving a public offering, ..."

In addition, the SEC proposed further revisions that would:

- simplify the preliminary note to Rule 144 and the text of Rule 144, using plain English principles
- increase the thresholds that would require filing a Form 144 from 500 shares or \$10,000 to 1,000 shares or \$50,000 and eliminate the requirement for non-affiliates
- eliminate the manner of sale limitations with respect to debt securities, including non-participating preferred stock and asset-backed securities
- codify several staff positions on Rule 144 issued by the Division of Corporation Finance and
- eliminate the presumptive underwriter provision in Rule 145, except for transactions involving a shell company.

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This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your LeBoeuf Lamb relationship partner.

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The release also seeks comments on how to coordinate the Form 144 filing requirements with the filing requirements under Section 16 of the Exchange Act. The SEC has proposed permitting Section 16 filers to:

- delay filing the Form 144 until the due date of the Form 4 and
- use the Form 4, as amended to include additional information, to satisfy the Form 144 requirement.

There will be a 60 day comment period after publication in the Federal Register.

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