SEC Adopts Amendments to Rules 144 and 145

New York
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I. Introduction

On December 6, 2007, the U.S. Securities and Exchange Commission (the "Commission") published its release adopting amendments to Rule 144 under the Securities Act of 1933 (the "Securities Act").[1] The changes are intended to increase the liquidity of privately placed securities and decrease the cost of capital for issuers, primarily by reducing regulatory burdens on reselling restricted securities. The Commission also adopted amendments to Rule 145 to eliminate the "presumptive underwriter" provision of that rule in most circumstances. The adopted amendments are in many respects similar to those proposed by the Commission in June 2007,[2] but have been modified in several respects to reflect the concerns of commenters and to provide additional clarifications regarding the proposed amendments. Most notably, the Commission determined not to reinstitute tolling as had been proposed in the Proposing Release.

Rule 144 provides a safe harbor from the Securities Act definition of "underwriter" to assist security holders in determining whether an exemption from the registration requirements of the Securities Act is available for a resale of securities. If a selling security holder satisfies all of Rule 144's applicable conditions in connection with a transaction, the holder is generally deemed not to be an "underwriter." Rule 144 was first adopted by the Commission in 1972, and has been amended from time to time, generally to make it easier for security holders to take advantage of the safe harbor without compromising investor protections. These most recent amendments have the same purpose.

The principal changes to Rule 144 were to shorten the restricted security holding period (to six months for securities of reporting companies and one year for securities of

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1 SEC Release No. 33-8869 (Dec. 6, 2007), 72 Fed. Reg. 71546 (Dec. 17, 2007) (the "Adopting Release").

2 SEC Release No. 33-8813 (June 22, 2007), 72 Fed. Reg. 36822 (July 5, 2007) (the "Proposing Release"). For additional information on the Proposing Release, please refer to this firm's Alert Memo entitled "SEC Proposes Amendments to Rules 144 and 145" (July 12, 2007).

non-reporting companies) and to permit non-affiliates to resell restricted securities freely after expiration of those holding periods (subject, in the case of reporting companies, to continued compliance with the Rule 144(c) public information requirement during the period from six months to one year). In addition, although the other requirements of Rule 144 continue to apply to sales of restricted and control securities by affiliate holders, the Commission has modified those provisions to eliminate manner of sale restrictions on debt securities and to ease the volume restrictions on debt securities and the manner of sale restrictions on equity securities.

The amendments to Rule 145 eliminate the presumptive underwriter provision in most cases, and harmonize the resale provisions of Rule 145(d) with those of amended Rule 144 in the limited cases where Rule 145 continues to apply.

The new rules were published in the Federal Register (17 CFR Parts 230 and 239) on December 17, 2007 and will become effective on February 15, 2008. The revised holding period and other adopted amendments are applicable to securities acquired at any time, whether before or after February 15, 2008.

II. Shortened Restricted Security Holding Periods and Elimination of Most Rule 144 Requirements Applicable to Non-Affiliates

Amended Rule 144 provides a safe harbor permitting any person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate for three months prior to that time (a "non-affiliate") to resell publicly restricted securities of companies that are, and have been for at least 90 days prior to the Rule 144 sale, subject to the reporting requirements of the Securities Exchange Act of 1934, as amended ("the Exchange Act") (such companies, "reporting companies") after those securities have been held[3] for at least six months. During the period from six months to one year, a non-affiliate may resell publicly securities of a reporting company so long as the issuer of the securities continues to make available the information required by Rule 144(c). After one year, a non-affiliate may resell freely securities of a reporting company irrespective of whether the issuer is in compliance with Rule 144(c). No other Rule 144 conditions will apply to sales by non-affiliates.[4]

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[3] For purposes of determining the length of the holding period, pursuant to Rule 144(d) a holder may be permitted to include, or "tack", periods during which prior non-affiliate holders held the restricted security, such that the aggregate holding period meets the requirements of the rule.

[4] These amendments, taken together with the similar amendments applicable to resales of securities of non-reporting companies, eliminate most of the provisions of Rule 144 that previously applied to resales of restricted securities that have been held for between one and two years by non-affiliate sellers. Those provisions, which continue to apply to sales by affiliate holders, included limitations on the amount of securities that can be sold in any three-month period, manner of sale limitations,

Similarly, amended Rule 144 provides a safe harbor permitting non-affiliates to resell publicly restricted securities of companies other than reporting companies ("non-reporting companies") after those securities have been held for at least one year. No other conditions apply to non-affiliate holders in respect of such sales.

Finally, amended Rule 144 provides a safe harbor permitting resales of restricted securities or other securities ("control securities") by affiliate holders, subject, in the case of restricted securities, to the same six-month and one-year holding periods and, in both cases, to the other resale conditions of Rule 144.

In the Adopting Release, the Commission states that, in the case of the securities of a reporting company, it believes a six-month holding period provides a reasonable indication that an investor has assumed the economic risk of investment in the securities in question. In the Commission's view, the shorter holding period should increase the liquidity of privately sold securities and decrease the cost of capital for reporting issuers, while still being consistent with investor protection. The Adopting Release also makes clear, however, that the Commission believes different holding periods for reporting companies and non-reporting companies are appropriate because reporting companies must file periodic reports that are publicly available on EDGAR and contain updated financial information. The current information required for resales of securities of non-reporting companies, which applies only to resales by affiliates, is more limited in scope, is not available on EDGAR and need not include audited financial information. This approach generally reflects the Commission's disclosure-based approach to investor protection.

The most noteworthy change from the Proposing Release to the Adopting Release was the Commission's decision not to reinstitute tolling. The Proposing Release included a provision that would have suspended (or "tolled") the holding period for restricted securities of reporting companies in circumstances where the holder engaged in certain hedging transactions. Commenters raised a number of issues regarding the proposed tolling provision, including concerns relating to complexity and cost of tracking and the nature and role of hedging transactions generally. In the Adopting Release, the Commission indicated that it has determined not to reinstitute tolling at this time, noting in particular comments asserting that, in the current environment, tolling would unduly complicate Rule 144 and could require holders or brokers to incur significant monitoring costs, which would frustrate the Commission's primary objectives of streamlining Rule 144 and reducing the cost of

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Form 144 filing requirements and the requirement that current information about the issuer be publicly available.

capital for issuers. The Commission noted, however, that it will revisit this issue if it observes abuse relating to the hedging activities of holders of restricted securities.[5]

In addition, in response to a request for guidance by some commenters, the Commission indicated in footnote 65 to the Adopting Release that, while the removal of a restricted securities legend remains a matter solely in the discretion of the issuer of the securities and disputes about the removal of legends are governed by state law or contractual agreements, the Commission does not object if issuers remove restrictive legends from securities held by non-affiliates after all applicable Rule 144 conditions are satisfied. Although this would still require a one-year holding period to run before the legend can be removed from securities held by a non-affiliate prior to sale, the ability to do so prior to a sale of the securities pursuant to Rule 144 should facilitate the settlement of trades in these securities.

III. Amendments to the Rule 144 Requirements Applicable to Affiliates

A. Liberalization of Volume and Manner of Sale Restrictions Applicable to Resales of Debt Securities

The Adopting Release eases both the volume and manner of sale restrictions applicable to resales of "debt securities"[6] by affiliates pursuant to Rule 144.[7] As initially proposed in the Proposing Release, the Commission has amended Rule 144 to provide that manner of sale limitations will no longer apply to affiliate resales of debt securities. In doing so, the Commission indicated it believes these restrictions place unnecessary burdens on resales of fixed income securities, and the characteristics of the fixed income securities market are sufficiently different from those of the market for equity securities that the

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5 The amendments to Rule 144 would not appear to be intended to alter the framework that market participants are currently using to analyze hedging transactions under Section 5 of the Securities Act. Footnote 90 of the Adopting Release recites several statements that the Commission and the staff have previously made regarding short sales, but, consistent with statements made at the open meeting, at which the footnote was mentioned, we believe nothing in the footnote modifies or goes beyond past positions.

6 Rule 144 defines "debt securities" to include (i) any security that is not an equity security (as defined in Rule 405 under the Securities Act), (ii) non-participatory preferred stock (i.e., non-convertible capital stock, the holders of which are entitled to dividend and liquidation preferences but are not entitled to participate in residual earnings or assets of an issuer) and (iii) asset-backed securities (as defined in Item 1101 of Regulation AB).

7 As a result of the other amendments to Rule 144, those requirements no longer apply to resales by non-affiliate holders.

change should not raise the same concerns regarding abuse that would arise in the context of equity securities.[8]

In addition, in response to input from commenters that existing Rule 144 volume limitations greatly constrained resales of debt securities, the Commission has revised the volume limitations applicable to resales of debt securities to better reflect the way in which debt securities are traded. As amended, Rule 144(e) provides, for debt securities only, an alternative method of calculating the maximum amount of securities that can be sold during the rule's three-month measurement period. Under the amended rule, an affiliate holder can resell, within any three-month period (taking into account all sales of securities of the same tranche or class sold for the account of that holder),[9] the greatest of (i) one percent of the units of the class of securities outstanding, (ii) the average weekly trading volume of the securities (as calculated under the rule) and (iii) 10% of a tranche[10] (or class when the securities are non-participatory preferred stock).

B. Modification of Manner of Sale Requirements Applicable to Equity Securities

Although the Proposing Release did not propose specific amendments to the manner of sale requirements applicable to equity securities, in the Adopting Release the Commission amended those provisions in two ways based on input from commenters. The Commission believes the adoption of these amendments will help to ensure the Rule 144 restrictions better reflect current trading practices and venues.

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8 The Commission has similarly distinguished between debt and equity securities in the past, for example in the context of Regulation S. *See, e.g.*, SEC Release No. 33-7505 (Feb. 17, 1998).

9 Although the language of amended Rule 144 originally contained in the Adopting Release was ambiguous, the language in the final version of the rule published in the Federal Register has been revised to clarify that affiliate sellers of debt securities may resell the amount of securities permitted by the *greatest* of the measures available, consistent with the Commission's intent.

10 While the Commission has not formally defined the term "tranche," it has been used by the Commission in other contexts to mean securities with identical terms. *See, e.g.*, Rule 902(f) of Regulation S under the Securities Act ("… in a continuous offering of non-convertible debt securities offered and sold in identifiable tranches, the distribution compliance period for securities in a tranche shall commence upon completion of the distribution of such tranche …"); *see also* SEC Release No. 33-7282, 34-37094 (Apr. 11, 1996) (noting that, for purposes of Regulation M, a broker-dealer participating in an offering "of a shelf tranche" should determine whether it is participating in a distribution); SEC Release No. IC-22775, IS-1095 (July 31, 1997) (stating that "in a global, multi-tranche offering of securities with identical terms at an identical offering price, with various closings that are conditioned upon each other, calculation of the percentage limit may properly be based on the total amount of the entire global offering").

First, the Commission has amended Rule 144(g) to permit the resale of restricted securities not only through brokers transactions and transactions with a market maker but also through "riskless principal" transactions, which for purposes of Rule 144 are defined as "principal transaction[s] where, after having received from a customer an order to buy, a broker or dealer purchases the security as principal in the market in order to satisfy the order to buy or, after having received from a customer an order to sell, sells the security as principal to the market to satisfy the order to sell."[11] To be eligible for the Rule 144 safe harbor, the offsetting trades must be executed at the same price (excluding any explicitly disclosed markup or markdown, commission equivalent or other fee), must be permitted to be reported as riskless under the rules of a self-regulatory organization[12] and must meet all the requirements of a brokers' transaction (except for the requirement that the broker does no more than execute the order to sell the securities as agent).[13]

The Commission also amended Rule 144(g) to except the posting of bid and ask quotations in alternative trading systems from the rule's non-solicitation provisions. In order to comply with Rule 144, a broker must neither solicit nor arrange for the solicitation of customers' orders to buy the securities in anticipation of, or in connection with, the transaction, subject to certain exceptions. The new exception provides that the posting of bid and ask quotations by a broker in an alternative trading system[14] will not be deemed a solicitation so long as the broker has published *bona fide* bid and ask quotations for the security in the alternative trading system on each of the last 12 business days.[15]

C. Increases to Form 144 Filing Thresholds

The Commission also adopted changes to Form 144 to eliminate the last vestiges of the filing condition for non-affiliates and to increase the filing threshold for affiliates to trades of 5,000 shares or $50,000 within a three-month period. These changes are substantially similar to those proposed in the Proposing Release, although the share

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11 *See* Note to Rule 144(f)(1).

12 *See, e.g.*, NASD Rules 4632(d)(3)(B), 4632C(d)(3)(B), 4632D(e)(3)(B), and 4632E(e)(3)(B); New York Stock Exchange Rule 92(c)(1).

13 The other requirements of a brokers' transaction are that the broker (i) neither solicit nor arrange for the solicitation of customers' orders to buy the securities in anticipation of, or in connection with, the transaction (subject to limited exceptions), (ii) receive no more than the usual and customary markup or markdown, commission equivalent or other fee, and (iii) conduct a reasonable inquiry regarding the underwriter status of the person for whose account the securities are to be sold.

14 Rule 300 of Regulation ATS defines "alternative trading system."

15 This contrasts with the provisions of Rule 144(g) excepting the posting of quotations on an inter-dealer quotation system, which requires only that the broker have published *bona fide* bid and ask quotations for the security in that system on at least 12 days within the preceding 30 calendar days, with no more than four business days in succession without such two-way quotations.

threshold of 5,000 represents an increase from the proposed 1,000 shares. In addition, although the Proposing Release solicited comments on how best to coordinate the filing requirements of Form 144 with those of Form 4, the Commission has not at this time adopted any related changes. The Commission did, however, state its intention to issue a separate release in the future intended to give affiliates greater flexibility in satisfying applicable Form 144 and Form 4 filing requirements.

IV. Other Amendments to Rule 144

A. General

The Commission adopted several changes to the Preliminary Note to Rule 144, which it indicated are intended to simplify, but not to alter the substantive operation of, the rule. While the Preliminary Note continues to refer only to Section 4(1) of the Securities Act, which provides an exemption for persons other than issuers, underwriters and dealers, and not to Section 4(3) of the Securities Act, which provides an exemption for dealers, including dealers no longer acting as underwriters, the amended rule adds Section 4(3) as part of the statutory basis for the revised rule. This represents a departure from the prior version of the rule (and from the version of the rule contained in the Proposing Release), which referred only to Section 4(1). This change is consistent with our belief and prior staff positions (provided in interpretive and no-action relief) that broker-dealers acting for their own account may rely on procedures in line with those of Rule 144 when selling restricted securities.[16]

The Commission also retained language from the existing Preliminary Note explaining the relationship among Sections 4(1) and 2(a)(11) of the Securities Act and the Rule 144 safe harbor, which states (among other things) that "[a]n investment banking firm

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[16] *See, e.g., Bear, Stearns & Co.* (Mar. 6, 1986) (where a dealer purchased restricted shares for its own separate investment account while acting as a specialist in the issuer's common stock in the ordinary course of its business, and the staff took the position that the short position resulting from a dealer's activities as a market maker in the issuer's stock should not affect the holding period in the sale of restricted shares if all conditions of Rule 144 were met); *Precision Optics Corp., Inc.* (Jan. 14, 1993) (where the staff took the position that when an underwriter acquires "compensation securities" from an issuer in a transaction not involving a public offering, those securities are restricted securities within the meaning of Rule 144(a)(3) and, accordingly, "… Rule 144 would be available for resales of such Compensation Securities, provided all the conditions of the rule are satisfied."); *Insilco Corp.* (May 2, 1974) (where the staff took the position that Rule 144 would be available to a broker-dealer, which also acted as a specialist in an issuer's common stock, in connection with the sale of restricted shares held in its investment account if all of the conditions of Rule 144 were satisfied (including the condition that the shares be sold in "brokers' transactions") and that any short positions in the issuer's common stock it established in the normal course of its specialist business would not be deemed to affect the holding period for such restricted shares so long as the short positions did not have any other relationship to the shares held in the investment account).

which arranges with an issuer for the public sale of its securities is clearly an 'underwriter' [for purposes of Section 2(a)(11)]." In this context, we note that the staff recently republished a telephone interpretation to the effect that an underwriter is permitted to resell unsold allotments after one year in accordance with the applicable restrictions of Rule 144.[17]

B. Codification of Certain Staff Positions Relating to Rule 144

The Commission has also adopted amendments codifying a number of staff interpretations previously issued by the Division of Corporation Finance regarding Rule 144. These amendments were adopted substantially as proposed.

1. Tacking of Holding Periods for Conversions and Exchanges of Securities

The Commission has codified the staff's position that, if securities are acquired from an issuer in exchange for other securities of the same issuer – for example, securities issued pursuant to Section 3(a)(9) of the Securities Act – the newly acquired securities are deemed to have been acquired at the same time as the securities surrendered for conversion or exchange, even if the securities surrendered were not convertible or exchangeable by their terms.[18] The note to the newly adopted amendment also clarifies that if (i) the original securities did not permit cashless conversion or exercise by their terms, (ii) the issuer amended the original securities to allow for cashless conversion or exercise and (iii) the security holder provided consideration for that amendment (other than securities of the issuer), then the new securities will be deemed to have been acquired at the same time the original securities were so amended, so long as, in the conversion or exchange, the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer.

2. Holding Periods for Cashless Exercise of Options and Warrants

The Commission has codified the staff's position that, upon a cashless exercise of options or warrants, the newly acquired underlying securities will be deemed to have been acquired when the corresponding options or warrants were acquired, even if the options or warrants did not originally provide for cashless exercise by their terms.[19] As with

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[17] *See* Securities Act Rule 144 Compliance and Disclosure Interpretations last updated on April 2, 2007 (at http://www.sec.gov/divisions/corpfin/guidance/rule144interp.htm):

"**Question:** How long must an underwriter wait before it resells the unsold portion of a sticky public offering as if it were compensation?

Answer: An underwriter may resell the unsold portion of a sticky public offering as if it were compensation (wait one year from close of offering, follow Rule 144 except for filing form), provided that one year has elapsed since the last sale under the registration statement."

[18] Rule 144(d)(3)(ii).

[19] Rule 144(d)(3)(x).

convertible and exchangeable securities, if the terms of the options or warrants are amended to permit cashless exercise and in connection with that amendment the holders provide consideration other than securities of the issuer, then the securities received on cashless exercise of those options or warrants will be deemed to have been acquired on the date the original options or warrants were so amended. In response to comments, the Commission revised the note to further clarify that the exercise itself must be cashless. The Adopting Release also codifies the staff's position that grants of certain options or warrants that were not purchased for cash or property (including, in particular, employee stock options) do not create any investment risk, and accordingly, holders of those securities are not permitted to tack the holding period of the option or warrant to that of the security delivered upon exercise, and are instead generally deemed to have acquired the underlying securities on the date the option or warrant is exercised.

3. Application of Rule 144 to Securities Issued by Shell Companies

The Commission has codified two staff positions relating to securities issued by shell companies in new Rule 144(i).[20] Rule 144(i) provides that Rule 144 is not available for the resale of securities initially issued by a reporting or non-reporting shell company (other than a business combination related shell company), or an issuer that has previously been such company, unless it meets certain conditions.[21] Rule 144(i) permits a selling security holder to rely on the Rule 144 safe harbor for resale of securities of an issuer that was formerly a shell company if it has ceased to be a shell company, is subject to Exchange Act reporting requirements and has filed all required reports and materials during the preceding 12 months (or any shorter applicable period). In addition, at least one year must have elapsed from the date on which the issuer initially files current Form 10 information (*i.e.*, information equivalent to that a company would be required to file were it registering a class of securities under the Exchange Act) with the Commission reflecting its change in status. This last condition represents a departure from the Proposing Release, which had provided that only 90 days need elapse after the filing of the Form 10 information, and the

[20] Rule 405 under the Securities Act defines a "shell company" as a registrant, other than an asset-backed issuer, that has (i) no or nominal operations and (ii) either (a) no or nominal assets, (b) assets consisting solely of cash and cash equivalents or (c) assets consisting of any amount of cash and cash equivalents and nominal other assets. Recent offerings by "special purpose acquisition corporations", or SPACs, involve companies that are shell companies.

[21] The Commission clarified in footnote 172 to the Adopting Release that this prohibition is not intended to apply to securities that were not initially issued by a reporting or non-reporting shell company (or by an issuer that has at any time previously been such a company), even when the issuer is a reporting or non-reporting shell company at the time of the Rule 144 sale. The Commission also indicated this rule is not intended to capture "start-up companies" (i.e., companies with limited operating history), unless those companies have "no or nominal operations".

Commission noted in the Adopting Release its belief that a one-year period was necessary to provide sufficient investor protection.

4. Aggregation of Pledged Securities

The Commission has codified the staff's position that in *bona fide* pledge transactions, a pledgee of securities need not aggregate its sale of an issuer's securities with sales of the securities of the same issuer by another pledgee of the same pledgor, absent concerted action by the pledgees and so long as the pledgees are not the same "person" for purposes of Rule 144(a)(2).[22] The pledgee must, however, continue to aggregate any sales by the pledgor with its own sales. Since non-affiliate pledgees are no longer subject to the volume limitations of Rule 144 under the amended rule, the aggregation rule will apply only to affiliate pledgees.

5. Modification of Form 144 Representation For Sale Under Rule 10b5-1(c)

The Commission has codified the staff's position that a selling security holder who sells securities pursuant to and satisfies Rule 10b5-1(c) may modify the representation in Form 144 to indicate he or she had no knowledge of material adverse information about the issuer as of the date on which he or she adopted the written trading plan or gave the trading instruction pursuant to the plan, specifying that date and indicating the representation speaks as of that date rather than the date the form is signed (as was previously required by Form 144).

6. Codification of Other Interpretations

The Adopting Release has codified the staff's positions that securities acquired from an issuer pursuant to the exemption from registration under Section 4(6) of the Securities Act are "restricted securities"[23] and that holders may tack the Rule 144 holding period in connection with transactions that are conducted solely to form a holding company, subject to certain requirements.[24]

V. Related Changes to Other Regulations

1. Asset-Backed Securities Transactions – Rule 190

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22 Rule 144(e)(3)(ii) and note thereto.

23 Section 4(6) provides an exemption from registration for an offering that does not exceed $5 million, is made only to accredited investors, does not involve any advertising or public solicitation by the issuer (or anyone acting on its behalf) and for which a Form D has been filed.

24 This amendment does not change the staff's position that permits tacking in connection with the reincorporation of the issuer in a different state in certain situations.

In connection with the changes to Rule 144 the Commission has also amended Rule 190 under the Securities Act, which addresses when registration of the sale of underlying securities is required for transactions involving asset-backed securities, to prevent changes that would have potentially permitted the resecuritization of privately placed debt or other asset-backed securities without registration in as little as six months after issuance. Following that amendment, Rule 190 provides that, if the underlying securities are restricted securities, Rule 144 is available for the sale of the securities in the resecuritization only after at least two years have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or an affiliate of the issuer. Otherwise, the underlying securities must be concurrently registered with the offering of the asset-backed securities to which they relate. The amendment effectively maintains the two-year holding period of pre-amendment Rule 144 in the context of resecuritizations, rather than permitting a reduction to six months, as the revised Rule 144 would otherwise have provided. The Commission believes that would have been inappropriate based on the particular circumstances of asset-backed securities, the established experience with a two-year holding period and the perceived potential for abuse.

2. Regulation S Distribution Compliance Period

The Commission has shortened the Category 3 distribution compliance period of Regulation S applicable to equity securities of domestic U.S. issuers from one year to six months for U.S. reporting issuers. The shorter period coincides with the new Rule 144 holding period applicable to reporting companies. However, resale of these securities in the United States remains subject, pursuant to Rule 905 of Regulation S, to the issuer continuing to comply with Rule 144(c)'s publicly available information requirement until the expiration of one year, as is required for any resale of restricted securities of a reporting company.

VI. Amendments to Rule 145

The Commission has eliminated the presumptive underwriter provision of Rule 145,[25] other than with respect to transactions involving securities of a shell company (other than a business combination shell company).[26] For transactions involving shell companies,

[25] Rule 145 provides that exchanges of securities in connection with reclassifications, mergers, consolidations or transfers of assets subject to shareholder vote or consent constitute sales of those securities, and previously deemed parties to such transactions (other than the issuer) and their affiliates to be underwriters unless they sold their securities in a prescribed manner.

[26] The Adopting Release notes that, with respect to Rule 145 transactions that are exempt from registration pursuant to Section 3(a)(10) of the Securities Act, if any party to the transaction is a shell company, then any party to the transaction (other than the issuer) and its affiliates will be permitted to resell their securities in accordance with the restrictions of Rule 145(d). The Adopting Release also indicates that, concurrently with the effective date of the Rule 144 amendments, the staff intends to issue a revised Staff Legal Bulletin No. 3 that will address the treatment of parties to a transaction and

the proposed rule harmonizes the resale restrictions of Rule 145(d) with those of amended Rule 144.

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Questions regarding the Commission's adopted amendments can be directed to your regular contacts at the firm or to any of our partners and counsel listed under Capital Markets in the "Our Practice" section of our web site, http://www.clearygottlieb.com.

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their affiliates that have acquired securities in a transaction exempt from registration pursuant to Section 3(a)(10).

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