SECURITIES LAW360

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SEC Rule Amendments Will Add New Liquidity

Thursday, Feb 14, 2008 --- On Feb. 15, 2008, the most significant amendments in over a decade to Rule 144 under the Securities Act of 1933 will go into effect.

Rule 144 is the primary legal means, without Securities Act registration, by which (1) an affiliate (typically, a director, officer or significant shareholder) of the issuer may resell any securities of the issuer into the public market, and (2) anyone may resell "restricted securities" (typically, those acquired in exempt transactions and not in a registered offering or open-market purchase) into the public market.

The latest Rule 144 amendments:

reduce the required holding period for restricted securities issued by companies that have been subject to SEC reporting requirements for at least 90 days ("reporting companies") from one year to six months.
eliminate all Rule 144 restrictions other than the holding period for resale of restricted securities by non-affiliates (except that non-affiliates must comply with the current public information requirement when they resell restricted securities of reporting companies until they have completed a one-year holding period).

relax the Rule 144 restrictions that remain in place for affiliates by (1) raising thresholds for Form 144 filing from 500 shares or $10,000 to 5,000 shares or $50,000; (2) eliminating the manner-of-sale requirement for "debt securities" (defined to include non-participatory preferred and asset-backed securities); and (3) adding a new alternative volume limitation permitting resale of up to 10% of a tranche or class of debt securities per three months.

The amendments also codify in the text of Rule 144 several important interpretations by the SEC staff, including those permitting tacking of holding periods in holding-company reorganizations and in cashless exercise of options and warrants and those restricting use of Rule 144 by "shell companies" (companies with no or nominal operations and either no or nominal assets or assets limited to cash or cash equivalents).

At the same time these important amendments to Rule 144 go into effect, amendments to Rule 145 under the Securities Act also go into effect. These amendments eliminate application of the Rule 145(c) "presumptive underwriter" provision to business combination transactions (e.g., mergers, exchanges) that do not involve a shell company.

This important change will make securities issued in business combination

transactions that are registered under the Securities Act freely tradeable in the hands of an affiliate of the acquired company if such affiliate does not become an affiliate of the acquiring company.

The amendments to Rule 144 and Rule 145 will apply, once effective, to securities whether acquired before or after the effective date.

These amendments add important new liquidity for securities sold in exempt financings and in business combination transactions. They are likely to have a significant impact on the terms and structuring of such financings and transactions by decreasing incentives for Securities Act registration generally, making Rule 144A, PIPES and other exempt financings more attractive and reducing or eliminating the need for onerous registration rights.

--By Bryn R. Vaaler, Dorsey & Whitney LLP

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