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Client Alert

SEC's Amendments to Rules 144 and 145 under the Securities Act to Become Effective on February 15, 2008—The Amended Rules Significantly Liberalize Resales of Restricted Securities and Securities Acquired in Business Combinations

The SEC's amendments to Rules 144 and 145 will become effective on February 15, 2008 and will apply to securities acquired both before and after that date. The amended rules significantly liberalize resales of restricted securities and securities acquired in business combinations. The amendments are intended to make capital raising easier and less expensive by giving purchasers of privately-placed securities the ability to resell those securities more rapidly without registration under the Securities Act. The rules are also intended to bring more certainty to resales of restricted securities by formalizing certain positions adopted by the SEC over the years.

Overview of Rule 144

Rule 144 is the principal exemption by which holders of "restricted securities" can resell those securities into the public markets or, under some circumstances, in a private transaction, without registering them under the Securities Act. Restricted securities are typically securities acquired directly or indirectly from an issuer, or from an affiliate of an issuer, in a transaction or chain of transactions not involving a public offering. Rule 144 also regulates the resale of any other securities held by affiliates of an issuer (commonly referred to as "control securities") regardless of whether those securities were acquired in a registered transaction or pursuant to an exemption from registration.

Rule 144 currently permits an affiliate or non-affiliate of an issuer to sell restricted securities after a one-year holding period, subject to the availability of current public information about the issuer, compliance with volume limitations, manner of sale requirements and the filing of a Form 144. A non-affiliate may sell restricted securities without any limitations after a two-year holding period.

Amendments to Rule 144 and 145

The substantive amendments to Rules 144 and 145 include:

- With respect to non-affiliates, amended Rule 144 (i) shortens to *six months* the holding period for resales of restricted securities of a reporting company, provided the company is current in its Form 10-K and 10-Q filings (or Form 20-F in the case of a foreign private issuer) and (ii) shortens to *one year* the holding period for unlimited resales of restricted securities of a reporting or non-reporting company and imposes no information or other requirements.

The White & Case LLP Securities Alert provides a brief overview of some of the latest legislative, regulatory and judicial actions, policy statements and decisions that affect public and private companies.

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- With respect to affiliates, amended Rule 144 shortens to *six months* from *one year* the holding period for resales of restricted securities of a reporting company, provided the issuer is current with its Form 10-K and 10-Q filings (or Form 20-F in the case of a foreign private issuer). Sales are subject to compliance with volume limitations and the filing of a Form 144, as well as manner of sale requirements in the case of equity securities only. The holding period for the resale by an affiliate of restricted securities of a non-reporting company remains one year.

- Amended Rule 144 facilitates the resale of debt securities by affiliates in a manner not previously permitted by removing all "manner of sale" requirements for debt securities and adding a new volume limitation for debt securities up to maximum of 10 percent of the principal amount of the debt tranche (or class in the case of non-participatory preferred stock) in any three-month period.

- For a broker selling equity securities on behalf of an affiliate, amended Rule 144 permits (i) "riskless principal" transactions as a permitted manner of sale transaction and (ii) the use of alternative trading systems (as defined in Regulation ATS) as a means of effecting the sale.

- Amended Rule 144 limits the Form 144 filing requirement to affiliates and requires such filing only if the intended resale exceeds either 5,000 shares or US$50,000.

- Amended Rule 145 no longer contains the "presumptive underwriter" provision, except in the case of business combination transactions involving shell companies. The practical effect of this is that affiliates of a target who are not affiliates of the surviving entity will be able to resell their shares immediately.

The SEC did *not* adopt the proposed requirement to "toll," or halt, the holding period for up to six months when a restricted security was hedged by a put equivalent position. Therefore, the ability of parties to hedge restricted stock during the Rule 144 holding period remains subject to existing principles.

The new amendments also codify the following interpretations of Rule 144 by the SEC Division of Corporation Finance:

- Subject to compliance with the conditions of the new rule, the holding period of securities issued by a holding company commences when the securities were issued by the predecessor company.

- Subject to compliance with the conditions of the new rule, the holding period for cashless conversions and exchanges of securities commences when the original securities were issued, even if the original security did not permit conversion or exchange.

- Subject to compliance with the conditions of the new rule, the holding period for securities issued upon the cashless exercise of options and warrants that were purchased for cash or property and created investment risk commences when the option or warrant was purchased.

- Pledgees of securities do not need to aggregate their sales of pledged securities with each other provided they are not the same "person" under Rule 144 and are not acting in concert.

- Rule 144 is not available for the resale of restricted securities issued by certain shell companies.

- Securities issued under Section 4(6) of the Securities Act are considered "restricted securities."

- Form 144 is amended to enable a shareholder selling pursuant to a written pre-planned trading plan, commonly referred to as a Rule 10b5-1 plan, to represent that it is not in possession of material adverse information as of the date of the plan's adoption rather than the date that the Form 144 is filed.

Implications of the Amendments to Rules 144 and 145

- *Changes to forms and procedures for resales of restricted securities.* Under Amended Rule 144, banks and brokers will need to amend their basic Rule 144 forms to accommodate the shortened holding periods described above. The question arises in connection with resales by non-affiliates of a reporting company as to whether companies will be willing to de-legend restricted securities at the end of the six-month holding period. Since there is a requirement that a company be current at the time of such resales in its Form 10-K and 10-Q filings (or Form 20-F in the case of a foreign private issuer), de-legenging in advance may be difficult in the event that the issuer subsequently becomes non-current in its periodic reports. We therefore believe that the practice will develop of selling the shares prior to de-legending (as is currently the case with a Rule 144 sale). A different practice may develop for restricted stock of foreign private issuers where the annual Form 20-F is the only report that is required in order to be current in reporting obligations. An issuer that has filed its Form 20-F will therefore remain current through the six-month holding period.

- *Decrease in the number of resale registration statements.* Registration rights agreements and resale registration statements may no longer be as important in some transactions and may be eliminated in others due to the shortened holding periods. As noted above, this is because non-affiliates of a company that is current in its reporting obligations will be able to resell their securities freely after a six-month holding period. Many existing registration rights agreements terminate once a shareholder can sell securities freely under Rule 144. In addition, the earlier termination of registration rights agreements may result in an overhang in the market for securities of certain issuers, which we believe my impact the trading of such securities.

- *Changes to registration rights agreements.* We believe that as a result of amended Rule 144, rather than requiring the filing of a resale registration statement, non-affiliates holding restricted securities may require a covenant that the issuer remain current in its reporting obligations and pay liquidated damages if the holders are unable to sell restricted securities after six months because of the company's failure to remain current. In addition, issuers may choose to keep a registration statement effective only for six months after the date of issuance (rather than up to two years, which is currently a widespread practice) since after that time a non-affiliate of a reporting company may make unlimited sales of securities under amended Rule 144.

- *Implications for A/B exchange offers.* It generally takes six months to one year for a registration statement in connection with an exchange offer to be prepared, filed and declared effective. As a result, A/B exchange offers following Rule 144A transactions may decrease and issuers may no longer be as willing to enter into registration rights agreement for such exchange offers. We believe, however, that the market will be slow to react to the regulatory change and that exchange offer registration statements will continue to be filed in the near term. This will likely remain the case in the longer term for non-reporting companies that conduct high yield offerings. For these companies, even if they become voluntary filers, the holding period for non-affiliates will continue to be one year resulting in such investors continuing to require an exchange offer for their privately-held securities.

- *Increased limitations on the resale of certain SPAC securities.* SPACs (special purpose acquisition companies), which in 2007 raised a record US$12 billion, are still subject to more onerous regulations under the new rules than other companies. First, the SEC has historically taken the position that promoters or affiliates of a SPAC, both before and after a business combination, act as "underwriters" and, accordingly, Rule 144 is not available for resale of their securities. It was, however, understood that persons who were not promoters or affiliates,

and purchased shares in a Rule 144A offering by a SPAC could resell their shares freely under Rule 144(k) after a two-year holding period. The recent amendments clarify that Rule 144 will not be available even to these people until one year after the SPAC ceases to be a shell company *and* becomes an Exchange Act reporting company. This may decrease the attractiveness of "unregistered" SPACs that have commonly listed on the London Stock Exchange AIM after conducting a Rule 144A offering. Second, the "presumptive underwriter" provision will continue to apply to business combinations involving SPACs with the result that affiliates of a company acquired by a SPAC will continue to be subject to additional restrictions even if they are issued registered shares and are not affiliates of the surviving entity.

- *Mergers and acquisitions.* Investment banks, acquirors and targets may look more favorably upon receipt of an acquirer's securities as merger consideration due to the favorable changes to Rule 145. Acquisition shelf registration statements, which were not widely used in any event due to the onerous requirements for their use, should become virtually obsolete due to the ability of the target's affiliates who are not affiliates of the surviving entity to resell their shares immediately.

Background to Amended Rule 144

Since the adoption of Rule 144 in 1972, the SEC has revised the rule a number of times. The most significant recent amendments were in 1997 and resulted in the shortening of the holding period before affiliates and non-affiliates could sell restricted securities, subject to limitations, from two years to one year, and the holding period before non-affiliates could sell restricted securities, without limitations, from three years to two years. The new amendments are a further liberalizing step following the SEC's assessment of the effect on the capital markets of its previous amendments.

Amendments to Rule 144

Shortening of Holding Period for Restricted Securities of Reporting Companies to Six Months for Affiliates and Non-Affiliates

Under amended Rule 144, resales of restricted securities of a reporting company may be made after a six-month holding period by both affiliates and non-affiliates. Prior to the amendment, Rule 144 imposed a one-year holding period. In amending this provision, the SEC has drawn a distinction, for the first time, between the holding period applicable to securities of an Exchange Act reporting company and that of a non-reporting company. An Exchange Act reporting company is a company that has been subject to the reporting requirements of the Exchange Act for at least 90 days before the sale. A voluntary filer is *not* considered an Exchange Act reporting company.

Significant Reductions in Requirements Applicable to Non-Affiliates Reselling Restricted Securities

Resales of Restricted Securities of a Reporting Company by Non-Affiliates After Six-Month Holding Period. In addition to shortening to six months the holding period for resales of restricted securities of a reporting company, amended Rule 144 removes all other requirements for the resale of such securities, other than a current information requirement, for a person who is not an affiliate and has not been an affiliate during the three months preceding the sale. In order for a non-affiliate to resell securities of a reporting company after the six-month holding period, the company must have filed each Form 10-K and 10-Q required to be filed during the 12 months preceding the sale (or such shorter period that the issuer was required to file such report). A failure to file a required Form 8-K does not adversely affect the availability of the exemption.[1]

1 The SEC has also conformed to six months the distribution compliance period under Regulation S for Category 3 reporting issuers.

Resales of Restricted Securities of Reporting or Non-Reporting Company by Non-Affiliates After One-Year Holding Period. A non-affiliate is permitted to resell restricted securities of a reporting or non-reporting company freely after a one-year holding period without compliance with any requirements under Rule 144. In effect, this shortens to one year the two-year holding period that existed under former Rule 144(k) (which has been deleted and moved to Rule 144(b)(1) as part of the amendments to Rule 144).

No Tolling of Holding Period for Hedging Positions

The SEC had initially proposed to "toll" or halt, the holding period for up to one year in the event that a holder of restricted securities of a reporting company engaged in certain hedging activities related to a "put equivalent position." The SEC has not adopted any tolling requirement in the final rules noting that it would unduly complicate Rule 144 and that the SEC would revisit this issue if it observed abuses by holders of restricted securities. Therefore, the ability of parties to hedge restricted stock during the Rule 144 holding period remains subject to existing principles. Under these principles, a sale of securities is deemed to occur at the time that a short position is established, which is generally when shares are sold into the market. Accordingly, the conditions of Rule 144 must be met at the time of the short sale rather than when shares are delivered to close out the short position.

Amendment to Manner of Sale Requirements of Equity Securities by Affiliates

Riskless Principal Transactions. Existing manner of sale requirements require affiliates to sell restricted securities through a broker in "brokers' transactions" (which limit a broker to acting in the capacity as agent for the seller) or in transactions directly with a "market maker" (which place significant restrictions on the party to whom the broker could sell the securities). Amended Rule 144(g) also permits the resale of securities through a broker in a "riskless principal" transaction, which is transaction in which the broker purchases or sells securities in the market as principal in order to satisfy a buy or a sell order previously received. The ability to make riskless principal trades does not change the existing requirements of Rule 144(g) that the broker may neither solicit, nor arrange for the solicitation of, customers' orders to buy the securities, must receive no more than the usual and customary commission or fee, and must conduct a reasonable inquiry of the underwriter status of the person for whose account the securities are being sold.

Alternative Trading Systems. A broker executing a "brokers' transaction" will not violate the no solicitation rule by merely posting bid and ask quotations in alternative trading systems (as defined in Regulation ATS), provided the broker has published bone fide quotations in such system on each of the preceding 12 business days. The ability to post bid and ask quotations is similar to existing rules permitting the posting of quotations in an inter-dealer quotation system, such as the Electronic Pink Sheets.

Significant Liberalization of Resale Provisions for Debt Securities

Elimination of Manner of Sale Requirements for Debt Securities. Amended Rule 144(f) removes entirely the requirement that debt securities be sold in "brokers' transactions" or in transactions directly with a "market maker." In connection with the sale of a debt security, the amendment also removes the prohibition on a seller from (1) soliciting or arranging for the solicitation of orders to buy the securities in anticipation of, or in connection with, the Rule 144 transaction or (2) making any payment in connection with the offer or sale of the securities to any person other than the broker who executes the order to sell the securities. For the purpose of this provision, a debt security is (i) any security other than an equity security, which includes convertible securities;[2] (ii) non-participatory preferred stock and (iii) an asset-backed security.

2 The term "equity security" as defined in Rule 405 under the Securities Act includes "any stock or similar security, certificate of interest or participation in any profit sharing agreement, preorganization certificate or subscription, transferable share, voting trust certificate or certificate of deposit for an equity security, limited partnership interest, interest in a joint venture or certificate of interest in a business trust; any security future on any such security or any security convertible, with or without consideration into such a security or carrying any warrant or right to subscribe to or purchase such a security or any such warrant or right or any put, call, straddle or other option or privilege of buying such a security from or selling such a security to another without being bound to do so."

New Volume Limitations for Debt Securities. Old Rule 144 permits the resale during a three-month period of an amount of securities that did not exceed the greater of (i) one percent of the shares or other units of the class outstanding, or (ii) the average weekly trading volume during a four-week period preceding the filing of a notice on Form 144 related to the sale. These rules effectively precluded the resale of debt securities by affiliates pursuant to Rule 144. Amended Rule 144 permits the resale during a three-month period of an amount of debt securities that does not exceed 10 percent of the principal amount of the debt tranche (or class in the case of non-participatory preferred stock) together with all sales by that person of securities of the same tranche sold during that period.

Increase in Form 144 Filing Thresholds

Amended Rule 144(h) requires the filing of a Form 144 if the intended sale exceeds either 5,000 shares (up from 500 shares) or US$50,000 (up from US$10,000). Due to the other amendments to Rule 144, a non-affiliate is never required to file a Form 144.

Codification of Existing Staff Positions under Rule 144

Amended Rule 144 incorporates several provisions that codify existing positions adopted by the staff of the SEC Division of Corporation Finance.

Tacking of Holding Periods For Conversions and Exchanges of Securities

Rule 144(d)(3)(ii) continues to provide that if the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities will be deemed to have been acquired at the same time as the securities surrendered for conversion or exchange. The rule, as amended, now codifies the Division of Corporation Finance's position that tacking is still permitted even if the securities surrendered were not convertible or exchangeable by their terms. The SEC has added a note that clarifies the start of the holding period under the following different scenarios:

Scenario	Date of Start of Holding Period
Underlying security issued upon cashless conversion or exchange of security that was originally convertible or exchangeable by its terms.	Holding period starts from date of original issuance of underlying security.
Non-convertible or non-exchangeable security is amended to permit cashless conversion or exchange. Holder provides no consideration for the amendment (other than solely securities of the issuer).	
Non-convertible or non-exchangeable security is amended to permit cashless conversion or exchange. Holder provides consideration for the amendment (other than solely securities of the issuer).	Holding period starts from date of amendment of original security to permit cashless conversion or exchange.

Cashless Exercise of Options and Warrants

Amended Rule 144(d)(3)(x) codifies the Division of Corporation Finance's position that the holding period of securities issued upon the cashless exercise of an option or warrant may be tacked to the holding period of the option or warrant. Such tacking is permitted even if the securities surrendered were not convertible or exchangeable by their terms. However, the SEC has added a note consistent with the position described above that if the holder provided consideration for the amendment to permit cashless exercise (other than solely securities of the same issuer), the holding period starts from the date of the amendment. The SEC has added a further note clarifying that if the options or warrants were not purchased for cash or property and did not create any investment risk in the holder, the holding period will only start upon exercise. This reflects the Division of Corporation Finance's long-standing position that tacking is not permitted for employee stock options since such options are not purchased for cash or property and create no investment risk. By way of further example, warrants that are granted as "kickers" in venture financing transactions will generally be amenable to tacking. Conversely, warrants issued to a charitable foundation for no consideration will generally not be amenable to tacking.

Tacking of Holding Periods When a Company Reorganizes into a Holding Company Structure

Amended Rule 144(d)(3)(ix) provides that the holder of securities in a newly-formed holding company may tack the period during which securities were held in the predecessor entity, provided: (1) the holding company securities were issued solely in exchange for securities of the predecessor as part of a reorganization of the predecessor into a holding company; (2) the holding company securities are of the same class and represent the same proportional interest in the holding company, as the predecessor securities and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor's securities and (3) immediately following the transaction, the holding company had no significant assets other than securities of the predecessor company and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

Aggregation of Pledged Securities

The SEC has added a new note to Rule 144(e)(2)(ii) clarifying that, provided pledgees are not the same "person" under Rule 144(a)(2), a pledgee of securities may sell pledged securities without having to aggregate the sale with sales by other pledgees of the same securities of the same pledgor, so long as there is no concerted action by those pledgees. This situation arises when a pledgor pledges securities to two or more lenders. Each pledgee will still have to aggregate its sales with sales by the pledgor.

Securities Acquired Pursuant to Section 4(6) Are Restricted Securities

Section 4(6) of the Securities Act provides an exemption from registration for an offering that does not exceed US$5 million, that is made only to accredited investors, that does not involve any advertising or public solicitation by the issuer or anyone acting on the issuer's behalf and for which a Form D has been filed. Rule 144(a)(3)(viii) now provides that these securities are "restricted securities," thereby codifying the Division of Corporation Finance's interpretive position.

Treatment of Securities Issued by Reporting and Non-Reporting Shell Companies

Amended Rule 144(i) codifies and expands the Division of Corporation Finance's position that Rule 144 is not available for the resale of securities issued by companies that are or were previously, blank check companies.[3] This position was premised on the notion that promoters or affiliates of blank check

3 A "blank check company" is a company that (i) is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person and (ii) is issuing "penny stock," as defined in Rule 3a51-1 under the Exchange Act.

companies, as well as their transferees, are underwriters, regardless of technical compliance with the rule, because resale transactions were intended to distribute securities to the public without compliance with the registration requirements of the Securities Act. By designating these persons as underwriters, the exemption provided by Section 4(1) of the Securities Act was unavailable.

The new rule is applicable to issuers that are "shell companies," which is a broader category of issuers than "blank check companies." In order to ensure that the exclusion prevents only abusive transactions, the amendments makes Rule 144 available to (i) a "business combination related shell company" and (ii) a company that ceases to be a blank check company under certain conditions. The following table summarizes the application of these restrictions:

Rule 144 Not Available	Rule 144 Available
Rule 144 is not available for the resale of restricted or unrestricted securities of any issuer that has currently or had at any time previously (1) No or nominal operations (2) Either (i) No or nominal assets (ii) Assets consisting solely of cash and cash equivalents (iii) Assets consisting of any amount of cash and cash equivalents and nominal or other assets. This is referred to as a "reporting or non-reporting shell company."	Rule 144 is available for the resale of restricted and unrestricted securities of a "business combination related shell company." This is a reporting or non-reporting shell company that is: (1) Formed by an entity that is not a reporting or non-reporting shell company solely for the purpose of changing the corporate domicile of that entity solely within the United States or (2) Formed by an entity that is not a shell company solely for the purpose of completing a business combination transaction among one or more entities other than the shell company, none of which is a shell company. Rule 144 is available for the resale of restricted and unrestricted securities of an entity that has (i) ceased to be a "reporting or non-reporting shell company;" (ii) become a reporting company under the Exchange Act; (iii) filed all reports and other materials required to be filed during the preceding 12 months (or such shorter period as the entity was required to file such reports and materials) other than Form 8-K reports and (iv) filed with the SEC in any filing at least one year before the proposed date of sale the information required to be included in Form 10, Form 10-SB or Form 20-F, as applicable, to register the class of securities sought to be sold under Rule 144. The first sale under Rule 144 may occur 90 days after such information is filed. Rule 144 is available for the resale of restricted and unrestricted securities of an "asset backed issuer."

Representations from Sellers under Rule 10b5-1 Plans

Form 144 previously required a selling shareholder to represent, as of the date that the form is signed, that he or she "does not know any material adverse information in regard to the current and prospective operations of the issuer of the securities to be sold which has not been publicly disclosed." A shareholder trading in securities pursuant to written pre-planned trading plan under Rule 10b5-1 is permitted to trade while aware of material nonpublic information about an issuer (whether adverse or not) provided, among other things, that the shareholder was not aware of material nonpublic information on the date on which the plan was adopted. As a result, the Division of Corporation Finance permitted a selling security holder to modify the wording on Form 144 to specify the date on which the plan was adopted and provide the required representation as of that date. The SEC has now codified this position by amending Form 144 to enable the representation to be given that the trading shareholder did not know any material nonpublic information as of the date of the adoption of the written pre-planned trading plan.

Amendments to Rule 145

Rule 145 under the Securities Act provides that exchanges of securities in connection with reclassifications of securities, mergers or consolidations or transfers of assets that are subject to a shareholder vote constitute a sale of those securities that requires registration unless an exemption is available. Old Rule 145(c) deemed persons who were parties to such a transaction, other than the issuer or affiliates of such persons, to be underwriters. The result was that parties that were affiliates of the target at the time that the transaction was submitted to a vote or a consent were subject to restrictions on the resale of securities received in the transaction even if the shares were registered and they were not an affiliate of the surviving entity.

Amended Rule 145 eliminate this "presumptive underwriter" provision for any transaction subject to Rule 145, subject to one exception discussed below. As a result, a Rule 145 transaction will still be deemed to result in a sale of securities that requires registration unless an exemption is available. However, resales of such securities will be subject to the standard provisions that apply to resales of restricted and other securities by affiliates and non-affiliates. Accordingly, when securities are registered in connection with a business combination, they will be freely tradable in the hands of recipient who is not an affiliate of the surviving entity. An affiliate of the surviving entity will be subject to Rule 144 other than the holding period requirement.

The presumptive underwriter provision under Rule 145(c) is retained in only one case: where any of the parties to the transaction is a shell company (other than a "business combination related shell company)". Under that circumstance, any person that was a party to the transaction is permitted to sell the securities after the shell company ceases to be a shell company under the following circumstances:

	Amended Rule 145		
Holding Period[4]	**90 Days**	**Between Six Months and One Year**	**One Year or More**
Type of Seller[5]	**Affiliate and Non-Affiliate**	**Non-Affiliate**	**Non-Affiliate**
Conditions to Sale	Sales permitted, subject to: (1) Current public issuer information (2) Volume limitations (3) Manner of sale requirements (except for debt securities) (4) Filing of Form 144	Sales permitted subject to issuer meeting current available information requirement of Rule 144(c)	Unlimited sales permitted

4 Calculated in the manner set forth in Rule 144(d).
5 References to "affiliate" include a non-affiliate that was an affiliate within three months preceding the sale.

Comparison of Requirements Under Old and Amended Rule 144

	Old Rule 144						
Holding Period	**Less Than Six Months**	**Between Six Months and One Year**		**Between One and Two Years**		**Two Years or More**	
Type of Seller	**Affiliate and Non-Affiliate**	**Affiliate**	**Non-Affiliate**	**Affiliate**	**Non-Affiliate**	**Affiliate**	**Non-Affiliate**
Conditions to Sale	No sale permitted	No sale permitted		Sales permitted subject to: (1) Volume limitations (for both restricted and unrestricted securities in the case of affiliates) (2) Manner of sale requirements (3) Current public issuer information (4) Filing of Form 144		Same as between one and two years	Unlimited sales permitted

	Amended Rule 144 (Effective February 15, 2008)				
Holding Period	**Less Than Six Months**	**Between Six Months and One Year**		**One Years or More**	
Type of Seller[1]	**Affiliate and Non-Affiliate**	**Affiliate**	**Non-Affiliate**	**Affiliate**	**Non-Affiliate**
Conditions to Sale	No sale permitted	Sales of restricted securities of a *reporting company*[2] permitted, subject to: (1) Current public issuer information[3] (2) Volume limitations (for both restricted and unrestricted securities)[4] (3) Manner of sale requirements (except for debt securities) (4) Filing of Form 144	Unlimited sales of restricted securities of *reporting company* permitted, subject to current public issuer information.	Sales of restricted securities of a *non-reporting company* permitted, subject to: (1) Current public issuer information (2) Volume limitations (for both restricted and unrestricted securities) (3) Manner of sale requirements (except for debt securities) (4) Filing of Form 144	Unlimited sales of restricted securities of securities of a reporting or *non-reporting-company* permitted

1 References to "affiliate" include a non-affiliate that was an affiliate within three months preceding the sale.

2 A reporting company is a company that has been subject to the reporting requirements of the Exchange Act for at least 90 days before the sale. A voluntary filer is not considered a reporting company.

3 For a reporting company, the company must have filed each Form 10-K and 10-Q (Form 20-F in the case of a foreign private issuer) required to be filed during the 12 months before the sale (or such shorter period that the company was required to file such reports). A failure to file a Form 8-K does not adversely affect the availability of the exemption. For a non-reporting company, the company must have made available the information required by Rule 15c2-11(1)(5) under the Exchange Act (other than paragraph (xv) thereof), which is the information that is required to be available before a broker is permitted to publish a quotation for the security.

4 The volume limitations are the greatest of (i) one percent of the shares or other units of the class outstanding as shown by the most recent report or statement published by the issuer, (ii) the average reported weekly trading volume of such securities during the four calendar weeks preceding the filing of a Form 144 or, if no filing is required, the date of receipt of the order to execute the transaction by the broker or the date of execution of the transaction directly with a market maker or (iii) solely in the case of debt securities, 10% of the principal amount of the tranche (or class where the securities are non-participatory preferred stock).

White & Case, founded in 1901, is a global law firm with over 2,300 lawyers. Over 500 lawyers are based in New York, including more than 75 securities lawyers, who are supported by over 275 securities lawyers worldwide.

We would be pleased to discuss any questions you may have regarding Rule 144 or Rule 145 or other issues arising from this memorandum. Please contact the lawyer at White & Case with whom you regularly discuss securities matters or any of the lawyers identified on the cover page of this memorandum.

This memorandum is provided for your convenience and does not constitute legal advice. It is prepared for the general information of our clients and other interested persons. It should not be acted upon in any specific situation without appropriate legal advice.

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