



NASAA

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September 24, 2007

Nancy M. Morris, Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

via e-mail to: rule-comments@sec.gov

RE: SEC Release No. 33-8813, File No. S-11-07
Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates For Resales of Restricted Securities

Dear Ms. Morris:

Please accept the following comments from the North American Securities Administrators Association (NASAA) regarding Release No. 33-8813, File No. S-11-07; "Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates For Resales of Restricted Securities."

NASAA believes it is important to comment on this Release because the proposals will have an important impact on state securities regulation. State securities laws as well as federal securities laws depend upon the basic principle that all securities must be registered unless specifically exempted from registration. The proposed revisions in the holding periods will have a dramatic effect on the decisions of small companies, particularly, to elect to register securities on the federal and state level. It may also have a dramatic effect upon the market price valuation and volatility of the company's shares. For the reasons set forth below, NASAA believes that the proposed changes will have long-term negative effects -- both on capital formation (for smaller companies particularly), as well as negatively impacting companies' existing public shareholders.

Holding periods are the mechanisms that enable companies (especially small companies) who raise capital privately, to use that capital to grow the company for an established time period before those new investors can "cash out" -- which would impact the market for the company's shares. NASAA believes that the reduction of holding periods will have three major negative impacts. First, companies will avoid registration leaving more securities to make their way to the markets via private placement resales of restricted shares without the discipline and transparency of registration. Second, it will increase the risk that insiders who should stay in the management of the company, will sell their shares and leave -- or at the least, it will lower insiders' incentives to manage. Third, reducing the holding periods, together with allowing unlimited sales to commence much earlier than the current rules permit, will accelerate the amount of shares coming to the market, thus potentially depressing the price of shares.

NASAA believes that there should be an alignment between the interests of public shareholders and the interests of persons holding restricted shares of the issuer.

NASAA's concern is that the interests of long-term public shareholders of an issuer should not be sacrificed by the issuer's engaging in private placement transactions (that create Rule 144 restricted shares) or merger transactions (subject to Rule 145). The SEC's proposed changes to those Rules enable the "newest kids/stockholders on the block" (who obtain their shares in such transactions at a discount from the current market price) to (more readily than before) "cash out" by selling their shares relatively quickly at a profit. The "market overhang" of those "new" restricted shares that soon will be eligible to be sold will prevent the longer-term public shareholders from seeing significant appreciation in the market price for their shares. This situation particularly impacts smaller issuers whose public "float" of shares is relatively small, such that an unlimited number of sales of "freed-up" Rule 144 shares continually hitting the market will drive down/keep down the market price of the shares.

Also, to the extent that management "insiders" are given a "faster track" under the proposed Amendments to sell their shares and cash out -- such reduces the incentive/reason for insiders to stay with the Company and build it up -- along with the Company's profits and price of the stock for the benefit of the public shareholders. And once a Company's insiders have cashed out sufficiently to enable them to move on to their next venture -- such leaves the Company's public investors to languish without the founders who put the Company together.

Rule 144 Proposed Amendments

The proposed amendments to Rule 144 would provide for:

(1) Unlimited resales of restricted securities held by non-affiliates of Exchange Act reporting companies permitted after a 6-month holding period (if the selling persons have not been affiliates in the preceding 3 months). [Current regulations would permit only limited resales by non-affiliates after holding restricted securities for 1 year, with a 2-year holding period required before unlimited resales could be made.]

(2) Unlimited resales of restricted securities held by non-affiliates of non-reporting companies permitted after a 1-year holding period (if the selling persons have not been affiliates in the preceding 3 months). [Current regulations would permit only limited resales by non-affiliates after holding restricted securities for 1 year, with a 2-year holding period required before unlimited resales could be made.]

(3) For affiliates of Exchange Act reporting companies, limited resales of restricted securities permitted after a 6-month holding period. [Current regulations would permit limited resales by non-affiliates after holding restricted securities for 1 year.]

(4) For affiliates of non-reporting companies, limited resales of restricted securities permitted after a 1-year holding period. [Same as current regulations.]

These proposed amendments to Rule 144 -- which cut most of the current holding periods for restricted securities in half -- must be viewed in the context of the significant changes made to Rule 144 in 1997 which cut most of the then-existing holding periods in half at that time.

Specifically, the holding period for both affiliates and non-affiliates holding restricted securities was reduced under the 1997 amendments from 2 years to 1 year (for limited sales). Also, the 1997 amendments reduced from 3 years to 2 years, the holding period for non-affiliates to sell restricted securities without limitation.

NASAA is particularly concerned about the amendments in (1) and (2) above which change the current regulations that limit resales of restricted stock by non-affiliates for both reporting and non-reporting companies for 1 year, to instead allow unlimited resales of restricted stock after the expiration of the reduced holding periods under the proposals (6 months for reporting companies, 1 year for non-reporting companies). Because under current regulations, unlimited sales would not be permitted for reporting companies until expiration of a 2 year holding period, the proposed changes reduce by 75% the current holding period for unlimited resales of shares of reporting companies, and by 50% the current holding period for unlimited resales of shares of non-reporting companies.

NASAA submits that such extreme reductions are improvidently large -- particularly when compared to pre-1997 levels when non-affiliates were subject to a 3-year holding period before they could make unlimited resales.

NASAA believes that the time frame required to elapse before "newer" investors acquiring shares in a private placement (presumably at a discount from the current market price) should be entitled to resell their shares without limitation should correlate to a time period that would demonstrate whether the "new" capital brought into the issuer by the "new" investors translates into increased revenue/profits, etc. for the issuer and an increased share price. Such a timing correlation would align the interests of, and benefit correspondingly, all stockholders, pre-existing and new.

Under the proposed changes, new investors in a private placement by a reporting company could make unlimited resales of their shares after 6 months -- long before the new capital could translate into new plant/equipment/inventory/sales/profitability or a stock price increase.

As such, the "new" shareholders would be able to start selling their shares in unlimited quantity based on a market price that had been built exclusively by previous stockholders' risk capital leading to the company's then-current share value, inasmuch as the benefits to the company of the "new" shareholders' capital would be unknown. As a result, the proposed changes will shift the market value of the company's shares away from the previous stockholders who had built up that value, into the pockets of the "new" stockholders holding restricted shares. Enabling new investors to "get their investment out quickly" in such fashion, does not align the interests of the newer investors with longer-term public shareholders whose prospects for stock appreciation will suffer because the "new" shareholders will be allowed to make unlimited sales in as little as 6 months for reporting companies, and 1 year for non-reporting companies.

In view of the above, NASAA recommends that resales of restricted securities by non-affiliates continue to be limited for at least 1 year for reporting companies, and for an appropriate longer period (suggested to be at least 18 months) for non-reporting companies.

Separately, and related to the above point, implicit in the SEC's proposals which provide for shorter holding periods for restricted shares of a reporting company than for a non-reporting

company, is that the information available to the marketplace regarding the company is better. If that is the basis, NASAA recommends that there should be an additional condition for a company to qualify for the shorter, reporting company holding periods -- namely, either that the company's shares are Section 18(b)(1) federal covered securities, or that the issuer has previously filed a 1933 Act registration statement, or that the issuer has been a public reporting company for an appropriate period (a minimum of 1 year). Holders of restricted shares in what had been a non-reporting and never-'33-Act-registered company should not get immediate benefit and use of the shorter holding periods based solely on a voluntary, first-time filing under the 1934 Act.

Rule 145 Proposed Amendments

Securities Act Rule 145 provides that exchanges of securities in connection with mergers, consolidations, or transfers of assets that are subject to shareholder vote, constitute sales of those securities. Rule 145(c) deems persons who are parties to such a transaction, other than the issuer, or affiliates of such parties, to be underwriters. Additionally, Rule 145(d) sets forth the restrictions on the resales of securities received in such transactions by persons deemed underwriters.

NASAA noted the statement on page 50 of the SEC Release that "... we believe it is appropriate to eliminate the presumptive underwriter provision in Rule 145, as it is no longer necessary in most circumstances." However, the Release did not provide any explanation/justification rationale for reaching that conclusion (other than mentioning that comments had been received to the SEC's 1997 proposal on this same issue).

The Release on page 50 went on to state that, "However, based on our experience with business combinations involving shell companies that have resulted in abusive sales of securities, we believe there continues to be a need to apply the presumptive underwriter provision to shell companies and their affiliates and promoters." NASAA agrees that the abusive sales of securities associated with shell companies warrants retaining the presumptive underwriter provision for shell companies and their affiliated parties.

Conclusion

NASAA believes that, for the reasons set forth above, the proposals under Rule 144 that would allow unlimited resales of restricted securities by non-affiliates in as little as 6 months (for reporting companies) or 1 year (for non-reporting companies) will undermine what should be an alignment of the interests of public shareholders with the interests of persons holding newly-acquired restricted shares of the issuer. Consequently, NASAA recommends that:

- (1) Resales of restricted securities by non-affiliates continue to be limited for at least 1 year for reporting companies, and for an appropriate longer period (suggested to be at least 18 months) for non-reporting companies; and
- (2) There should be an additional condition for a company to qualify for the shorter, reporting company holding periods -- namely, either that the company's shares are Section 18(b)(1) federal covered securities, or that the issuer has previously filed a 1933 Act registration statement, or that the issuer has been a public reporting company for an appropriate period (a minimum of 1

year).

For further information regarding these matters, please do not hesitate to contact Rex Staples, NASAA General Counsel at (202) 737-0900, Michael Stevenson, Securities Administrator for the Washington Department of Financial Institutions at (360) 902-8760, or Randall E. Schumann, Legal Counsel for the Wisconsin Division of Securities at (608) 266-3414.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph P. Borg". The signature is stylized with a large initial "J" and a long horizontal stroke at the end.

Joseph P. Borg
NASAA President and
Director, Alabama Securities Commission