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ALERT**

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SEC Shortens Rule 144 Holding Period and Adopts Other Regulatory Relief For Smaller Companies

At its open meeting held on November 15, 2007, the Securities and Exchange Commission (SEC) adopted rules shortening the holding periods for restricted securities pursuant to Rule 144 under the Securities Act of 1933, as amended, and also adopted other rules to streamline the regulation of smaller companies, as originally proposed at the SEC open meeting held on May 23, 2007. The new rules will make scaled disclosure regulations available to more companies, and create two new exemptions to the registration requirements of Section 12 of the Securities Exchange Act of 1934, as amended, for compensatory employee stock option plans. At this meeting, SEC Commissioner Christopher Cox recognized “the vital importance of smaller companies to the maintenance of healthy and robust capital markets in the United States and around the world.” Per Commissioner Cox’s statements, these rules focus on removing obstacles to the growth of small public companies, facilitating capital formation and decreasing the costs of capital for companies while maintaining the SEC’s mandate of providing investor protection. In addition, John White, Director of the SEC’s Division of Corporation Finance, noted that “[t]he revisions to Rule 144

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should make it more efficient for companies of all sizes to access the private markets.”

The final rules are outlined in a press release issued by the SEC ([available here](#)) and we describe the main provisions of these rules below.

Reducing Rule 144 Holding Periods

Non-Affiliates of Reporting Companies

Rule 144 will be amended to provide a 6-month holding period for sales of restricted securities by non-affiliates of reporting companies, subject to compliance with the current public reporting requirements in Rule 144(c). After a 12-month holding period, non-affiliates of reporting companies will be able to freely resell restricted securities without compliance with the current public reporting requirements. In addition, non-affiliates of issuers will no longer be required to file reports of sales on Forms 144.

Affiliates of Reporting Companies

Revised Rule 144 will also provide for a 6-month holding period for sales by affiliates of reporting companies, subject to revised manner of sale requirements for equity securities. The revised rule will also remove the manner of sale requirements for debt securities and ease the volume limitations on debt securities. Affiliates will continue to be subject to the current public reporting requirement. In addition, fewer affiliates will be required to file Forms 144 for sales under the rule, as the thresholds to require those filings will be raised from 500 shares or \$10,000 to 5,000 shares or \$50,000.

Non-affiliates and Affiliates of Non-Reporting Companies

For securities issued by non-reporting companies, both affiliates and non-affiliates will be subject to a one-year holding period.

These amendments to Rule 144 will become effective 60 days after their publication in the Federal Register, which is expected to occur in the next few weeks.

Simplifying Smaller Company Reporting Requirements

The final rules create a category of issuers to be known as “smaller reporting companies”, which will replace the “small business issuer” category and will include companies having less than a \$75 million public float (or revenues of less than \$50 million in the last fiscal year for companies without a calculable public float). The impact of this new category is significant, as 1,500 companies, in addition to current small business issuers will qualify as smaller reporting companies eligible for the scaled disclosure and reporting provided for under the new rules. The scaled disclosure requirements of Regulation S-B, which were previously available only to small business issuers, will be incorporated into Regulation S-K. Regulation S-B and the existing “SB” forms (such as registration statements on Form SB-2, annual reports on Form 10-KSB and quarterly reports on Form 10-QSB) will be eliminated.

These rules will become effective 30 days after their publication in the Federal Register.

Exemption of Employee Stock Options Issued as Compensation from Exchange Act Registration

Under the final rules, compensatory employee stock option plans of private, non-reporting issuers will be exempt from the registration requirements of Section 12(g) of the Exchange Act. Previously, a private company with 500 or more optionholders and more than \$10 million in assets was required to register options issued under its compensatory option plans. An exemption was also created for compensatory employee stock option plans of reporting companies. These exemptions only apply to the stock options themselves and not the class of securities underlying the stock options. The final published rules may include additional conditions for the use of these exemptions.

These final rules will become effective immediately upon their publication in the Federal Register.

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Please contact the Mintz Levin attorney with whom you work if you have any questions regarding these rule amendments.

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