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Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 239

[Release No. 33–8813; File No. S7–11–07]

RIN 3235–AH13

Revisions to Rule 144 and Rule 145 to Shorten Holding Period for Affiliates and Non-Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. We are proposing a six-month holding period requirement under Rule 144 for ''restricted securities'' of companies that are subject to the reporting requirements of the Securities Exchange Act of 1934. The proposed six-month holding period for restricted securities of reporting companies would be extended, for up to an additional six months, by the amount of time during which the security holder has engaged in hedging transactions. Restricted securities of companies that are not subject to the Exchange Act reporting requirements would continue to be subject to a one-year holding period prior to any public resale. We also propose to substantially reduce the restrictions on the resale of securities by non-affiliates. In addition, we propose to simplify the Preliminary Note to Rule 144, eliminate the manner of sale restrictions with respect to debt securities, increase the Form 144 filing thresholds, and codify several staff interpretive positions that relate to Rule 144. We also solicit comment on how best to coordinate Form 144 and Form 4 filing requirements. Finally, we propose amendments to Securities Act Rule 145, which establishes resale limitations on certain persons who acquire securities in business combination transactions, to eliminate the presumptive underwriter position in Rule 145(c), except for transactions involving a shell company, and to revise the resale requirements in Rule 145(d). We believe that the proposed changes will increase the liquidity of privately sold securities and decrease the cost of capital for all companies without compromising investor protection.

DATES: Comments should be received on or before September 4, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File Number S7–11–07 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–11–07. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Katherine Hsu, Special Counsel, and Ray Be, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 551–3430, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to Rule 144,[1] Rule 145,[2] Rule 190,[3] Rule 701[4] and Form 144[5] under the Securities Act of 1933.[6]

Table of Contents

I. Background and Overview
II. Discussion of Proposals
A. Simplification of the Preliminary Note and Text of Rule 144
B. Amendments to Holding Period Requirement and Reduction of Requirements Applicable to Non-Affiliates
1. Background
2. Amendments to Holding Period in Rule 144(d)
a. Six-Month Holding Period for Exchange Act Reporting Companies
b. Tolling Provision
3. Significant Reduction of Requirements Applicable to Non-Affiliates
C. Elimination of Manner of Sale Limitations for Debt Securities
D. Increase of the Form 144 Filing Thresholds
E. Codification of Several Staff Positions
1. Securities Issued Under Section 4(6) of the Securities Act Are Considered ''Restricted Securities''
2. Tacking of Holding Periods When a Company Reorganizes Into a Holding Company Structure
3. Tacking of Holding Periods for Conversions and Exchanges of Securities
4. Cashless Exercise of Options and Warrants
5. Aggregation of Pledged Securities
6. Treatment of Securities Issued by ''Reporting and Non-Reporting Shell Companies''
7. Representations Required From Security Holders Relying on Rule 10b5–1(c)
F. Amendments to Rule 145
G. Conforming and Other Amendments
1. Underlying Securities in Asset-Backed Securities Transactions
2. Securities Act Rule 701(g)(3)
III. Coordination of Form 144 Filing Requirements With Form 4 Filing Requirements
IV. General Request for Comments
V. Paperwork Reduction Act
A. Background
B. Summary of Proposed Amendments
C. Solicitation of Comments
VI. Cost-Benefit Analysis
A. Background
B. Description of Proposal
C. Benefits
D. Costs
E. Request for Comments
VII. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation
VIII. Initial Regulatory Flexibility Analysis
A. Reasons for, and Objectives of, Proposed Action
B. Legal Basis
C. Small Entities Subject to Rule
D. Reporting, Recordkeeping and Other Compliance Requirements
E. Overlapping of Conflicting Federal Rules
F. Significant Alternatives
G. Solicitation of Comments
IX. Small Business Regulatory Enforcement Fairness Act
X. Statutory Basis and Text of Proposed Amendments

I. Background and Overview

The Securities Act requires registration of all offers and sales of securities in interstate commerce or by use of the U.S. mail, unless an exemption from the registration requirement is available.[7] Section 4(1) of the Securities Act provides such an exemption for transactions by any person other than an issuer, underwriter or dealer.[8]

[1] 17 CFR 230.144.
[2] 17 CFR 230.145.
[3] 17 CFR 230.190.
[4] 17 CFR 230.701.
[5] 17 CFR 239.144.
[6] 15 U.S.C. 77a *et seq.*
[7] See 15 U.S.C. 77e.
[8] 15 U.S.C. 77d(1).

The definition of the term ''underwriter'' is key to the operation of the Section 4(1) exemption. Section 2(a)(11) of the Securities Act defines an underwriter as ''any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking.'' [9] The Securities Act does not, however, provide specific criteria for determining when a person purchases securities ''with a view to * * * the distribution'' of those securities. In 1972, the Commission adopted Rule 144 to provide a safe harbor from this definition of ''underwriter'' to assist security holders in determining whether the Section 4(1) exemption is available for their resale of securities.[10] If a selling security holder satisfies all of Rule 144's applicable conditions in connection with a transaction, he or she is deemed not to be an ''underwriter,'' and the Section 4(1) exemption would be available for the resale of the securities.

Since its adoption, we have reviewed and revised Rule 144 several times. We last made major changes in 1997.[11] At that time, we shortened the required holding period for securities that are defined as ''restricted securities.'' [12] Before the 1997 amendments, affiliates and non-affiliates could resell restricted securities, subject to limitation, after two years, and non-affiliates (who had not been affiliates during the prior three months) could resell restricted securities without limitation after three years.[13] The 1997 amendments changed these two-year and three-year periods to one-year and two-year periods, respectively.

At the time we adopted those changes, we proposed and solicited comment on several possible additional changes to Rule 144, Rule 145 and Form 144, including reducing the holding period further.[14] We received 38 comment letters on those proposed changes. As discussed more fully below, most commenters were divided between supporting further shortening of the holding period and waiting to see the results of the 1997 amendments. We have not taken further action to adopt the 1997 proposals.

Rule 144 regulates the resale of two categories of securities—restricted securities and control securities. Restricted securities are securities acquired pursuant to one of the transactions listed in Rule 144(a)(3).[15] Although it is not a term defined in Rule 144, ''control securities'' is used commonly to refer to securities held by affiliates of the issuer, regardless of how the affiliates acquired the securities.[16] Therefore, if an affiliate acquires securities in a transaction that is listed in Rule 144(a)(3), those securities would be both restricted securities and control securities.

Rule 144 states that a selling security holder shall be deemed not to be engaged in a distribution of securities and therefore not an underwriter with respect to such securities, thus making available the Section 4(1) exemption from registration, if the resale meets particular criteria. If the security holder is an affiliate of the issuer, or a non-affiliate that has held the restricted securities for less than two years,[17] these criteria include the following:

- There must be available adequate current public information about the issuer; [18]
- If the securities being sold are restricted securities, the seller must have held the security for a specified holding period; [19]
- The resale must be within specified sales volume limitations; [20]
- The resale must comply with the manner of sale conditions; [21] and
- The selling security holder may be required to file a Form 144.[22]

Under the current rule, a non-affiliate may publicly resell restricted securities without being subject to the above limitations if he or she has held the securities for two years and if he or she is not, and for the prior three months has not been, an ''affiliate'' of the issuer.[23]

We now are proposing amendments that would:

- Simplify the Preliminary Note to Rule 144 and text of Rule 144, using plain English principles; [24]
- Amend the Rule 144 holding period requirement for restricted securities of companies that are required to file reports under the Securities Exchange Act of 1934 [25] to provide for a six-month holding period if the security holder has not engaged in certain hedging transactions; [26]
- Require that security holders toll, or suspend, the holding period during the time they enter into certain hedging transactions, although under no circumstance would the holding period extend beyond one year; [27]
- Substantially reduce the requirements for non-affiliates so that they can resell securities freely after the holding period (except that non-affiliates of reporting companies would be subject to the current public information requirement until one year after the acquisition of the securities); [28]
- Eliminate the ''manner of sale'' limitations with respect to debt securities; [29]
- Increase the thresholds that would trigger a Form 144 filing requirement; [30]
- Codify the staff's positions, as they relate to Rule 144, concerning the following issues:
  - ○ Inclusion of securities acquired under Section 4(6) of the Securities Act in the definition of ''restricted securities,'' [31]
  - ○ The effect that creation of a holding company structure has on a security holder's holding period,[32]
  - ○ Holding periods for conversions and exchanges of securities,[33]
  - ○ Holding periods for the cashless exercise of options and warrants,[34]

[9] 15 U.S.C. 77b(a)(11).

[10] Release No. 33–5223 (Jan. 14, 1972) [37 FR 591].

[11] See Release No. 33–7390 (Feb. 28, 1997) [62 FR 9242].

[12] See 17 CFR 230.144(a)(3).

[13] The term ''affiliate'' is defined in 17 CFR 230.144(a)(1) as ''a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, [the] issuer.''

[14] Release No. 33–7391 (Feb. 28, 1997) [62 FR 9246] (''the 1997 proposing release''). In that release, we proposed to (1) revise the Preliminary Note to Rule 144 to restate the intent and effect of the rule, (2) add a bright-line test to the Rule 144 definition of ''affiliate,'' (3) eliminate the Rule 144 manner of sale requirements, (4) increase the Form 144 filing thresholds, (5) include in the definition of ''restricted securities'' securities issued pursuant to the Securities Act Section 4(6) exemption, (6) clarify the holding period determination for securities acquired in certain exchanges with the issuer and in holding company formations, (7) streamline and simplify several Rule 144 provisions, and (8) eliminate the presumptive underwriter provisions of Rule 145. We also solicited comment on (1) further revisions to the Rule 144 holding periods, (2) elimination of the trading volume tests to determine the amount of securities that can be resold under Rule 144, and (3) several possible regulatory approaches with respect to certain hedging activities.

[15] 17 CFR 230.144(a)(3).

[16] See the 1997 proposing release.

[17] See 17 CFR 230.144(k).

[18] 17 CFR 230.144(c).

[19] 17 CFR 230.144(d).

[20] 17 CFR 230.144(e).

[21] 17 CFR 230.144(f) and (g).

[22] 17 CFR 230.144(h).

[23] 17 CFR 230.144(k).

[24] See the proposed Preliminary Note, proposed paragraph (b), proposed paragraph (c) and related note, and proposed paragraphs (d)(3)(i), (e)(1), (e)(2)(vii) and (f).

[25] 15 U.S.C. 78a *et seq.*

[26] See proposed Rule 144(d).

[27] See proposed Rule 144(d)(3)(xi).

[28] See proposed Rules 144(b)(1) and (d).

[29] See proposed Rule 144(f).

[30] See proposed Rule 144(h).

[31] See proposed Rule 144(a)(3)(viii).

[32] See proposed Rule 144(d)(3)(ix).

[33] See proposed Rule 144(d)(3)(ii).

[34] See proposed Rule 144(d)(3)(xi).

○ Aggregation of a pledgee's resales with resales by other pledgees of the same security,[35]

○ The extent to which securities issued by ''reporting and non-reporting shell companies'' are eligible for resale under Rule 144,[36] and

○ Representations required from security holders relying on Rule 10b5–1(c);[37] and

• Eliminate the presumptive underwriter provision in Securities Act Rule 145, except for transactions involving a shell company, and harmonize the resale requirements in Rule 145 with the resale provisions for the securities of shell companies in Rule 144.[38]

We also solicit comment on delaying the Form 144 filing deadline to coincide with the deadline for filing a Form 4[39] under Section 16[40] of the Exchange Act and permitting persons who are subject to Section 16 to meet their Form 144 filing requirement by filing a Form 4.[41]

The following table briefly compares some of the most significant proposed amendments to the current regulatory scheme:

	Current regulations	Proposed amendments
Resales of Restricted Securities by Non-Affiliates Under Rule 144.	—Limited resales after holding restricted securities for one year.	—Unlimited resales after holding restricted securities of Exchange Act reporting companies for six months if they have not been affiliates during the prior three months, except that such resales would be subject to the current public information requirement between the end of the six-month holding period and one year after the acquisition date of the securities.
	—Unlimited resales after holding restricted securities for two years if they have not been affiliates during the prior three months.	—Unlimited resales after holding restricted securities of non-reporting companies for one year if they have not been affiliates during the prior three months.
	—No tolling of holding period as a result of hedging transactions.	—Specific provision tolling the holding period when engaged in certain hedging transactions. Maximum one-year holding period.
Resales by Affiliates Under Rule 144.	—Limited resales after holding restricted securities for one year.	—Limited resales after holding restricted securities of Exchange Act reporting companies for six months.
		—Limited resales after holding restricted securities of non-reporting companies for one year.
	—No tolling of holding period as a result of hedging transactions.	—Specific provision tolling the holding period when engaged in certain hedging transactions. Maximum one-year holding period.
Manner of Sale Restrictions	—Apply to resale of any type of security under Rule 144.	—Would not apply to resale of debt securities by affiliates or to any resale by non-affiliates.
Form 144	—Filing threshold at 500 shares or $10,000	—With respect to affiliates, filing threshold at 1,000 shares or $50,000.
		—No Form 144 filing required for non-affiliates.
Rule 145	—Presumptive underwriter provision applies to all Rule 145(a) transactions.	—Presumptive underwriter provision applies only to Rule 145(a) transactions involving shell companies, with revised resale requirements in Rule 145(d).

II. Discussion of Proposals

A. Simplification of the Preliminary Note and Text of Rule 144

As in the 1997 proposing release, we again are proposing amendments to simplify and clarify the Preliminary Note to Rule 144 and to incorporate plain English principles.[42] The current Preliminary Note is complex and may be confusing to many security holders. These proposed amendments to the Preliminary Note are not intended to alter the substantive operation of the rule. The revised Preliminary Note would briefly explain the benefits of complying with the rule. It also would clarify that any person who sells restricted securities, and any affiliate or any person who sells restricted securities or other securities on behalf of an affiliate, shall not be deemed to be engaged in a distribution of such securities and therefore not an underwriter with respect to such securities if the sale in question is made in accordance with all the applicable provisions of the rule. The Preliminary Note would further clarify that, although Rule 144 provides a safe harbor for establishing the availability of the exemption provided by Section 4(1), it is not the exclusive means for reselling securities without registration. Therefore, it does not eliminate or otherwise affect the availability of any other exemption for resales.[43]

In the original adopting release for Rule 144, we stated:

In view of the objectives and policies underlying the Act, the rule shall not be available to any individual or entity with respect to any transaction which, although in technical compliance with the provisions of the rule, is part of a plan by such individual or entity to distribute or redistribute securities to the public. In such case, registration is required.[44]

Consistent with this statement, we propose to add a statement to the Preliminary Note that the Rule 144 safe harbor is not available with respect to any transaction or series of transactions

[35] See proposed note to Rule 144(e)(2)(ii).

[36] See proposed Rule 144(i).

[37] 17 CFR 240.10b5–1(c). See proposed amendments to Form 144.

[38] See proposed Rule 145(d).

[39] 17 CFR 249.104.

[40] 15 U.S.C. 78p.

[41] Section 16 applies to every person who is the beneficial owner of more than 10% of any class of equity securities registered under Section 12 of the Exchange Act, and each officer and director (collectively, ''reporting persons'' or ''insiders'') of the issuer of such security. Section 16(a) of the Exchange Act requires that reporting persons report changes in their beneficial ownership of all equity securities of the issuer on Form 4 before the end of the second business day following the day on which the subject transaction (which caused the change in beneficial ownership) was executed.

[42] In 1997, all commenters to such amendments favored the simplification of the Preliminary Note. We note, however, that the current proposal would result in a significantly shorter note than the Preliminary Note proposed in 1997.

[43] Because we make this clarification in the Preliminary Note, we propose to delete current Rule 144(j), which currently provides that Rule 144 is a non-exclusive safe harbor.

[44] Release No. 33–5223.

that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.[45]

In addition, we are proposing changes throughout the rule to attempt to make the rule less complex and easier to read.

Request for Comment

- Should we adopt the simplified Preliminary Note? Should we keep more detail in the Preliminary Note than proposed? Does the Preliminary Note need further revision? If so, how should we revise it?
- Does the proposed language of the Preliminary Note delete or omit any information that should be addressed? Does the proposed language change the meaning of any information in the existing Preliminary Note?
- Should we not make any changes to the Preliminary Note? Does the existing Preliminary Note provide useful background information on Rule 144, the Section 2(a)(11) definition of an underwriter, or the Section 4(1) exemption? Is the Preliminary Note necessary or helpful? Should we eliminate it entirely?
- We also have streamlined and proposed plain English changes to various portions of the rule other than the Preliminary Note. Would any of the proposed language inadvertently change the substantive requirements of the rule? Do any of the changes create ambiguity with respect to settled issues?

B. Amendments to Holding Period Requirement in Rule 144(d) for Restricted Securities and Reduction of Requirements Applicable to Non-Affiliates

1. Background

As stated above, in 1997, we reduced the Rule 144 holding periods for restricted securities for both affiliates and non-affiliates.[46] Before the 1997 amendments, under Rule 144(d), security holders could sell limited amounts of restricted securities after holding their securities for two years if they satisfied all other conditions imposed by Rule 144.[47] Under 144(k), non-affiliates could sell restricted securities without limitation and be subject to no other conditions after holding their securities for three years. The 1997 amendments to Rule 144 reduced the two-year Rule 144(d) holding period to one year and amended Rule 144(k) so that non-affiliates could freely sell an unlimited amount of securities after two years, instead of three.

In the 1997 proposing release, we solicited comment on whether these holding periods should be reduced even further, with a focus on six months for the Rule 144(d) holding period. We received numerous comments on this issue. Twelve commenters recommended that we further reduce the holding period to six months.[48] Two other commenters thought that we should maintain the holding periods adopted in 1997.[49] Eight commenters recommended that we gain more experience with the new holding periods created in 1997 before proposing further amendments to those holding periods.[50]

2. Amendments to Holding Period in Rule 144(d)

a. Six-Month Holding Period for Exchange Act Reporting Companies

We now propose amendments to provide for a reduced holding period under Rule 144(d) for restricted securities of Exchange Act reporting companies held by affiliates and non-affiliates. Under the proposed revisions to Rule 144(d), affiliates and non-affiliates would both be permitted to resell restricted securities of Exchange Act reporting companies[51] publicly after holding the securities for six months, subject to other conditions of Rule 144, when applicable, if they have not engaged in hedging transactions with respect to the securities.[52] We believe that shortening the holding period in this way would increase the liquidity of privately sold securities and decrease the cost of capital for reporting companies without compromising investor protection.[53] By reducing the holding period for restricted securities, the proposed amendments could enable companies to raise capital more often through the issuance of securities in unregistered transactions, such as offshore offerings under Regulation S[54] or other transactions not involving a public offering, rather than through financing structures such as extremely dilutive convertible securities.

The fundamental purpose of Rule 144 is to provide objective criteria for determining whether an investor is an underwriter or has acquired securities for distribution. At the same time, we do not want the holding period to be longer than necessary or impose any unnecessary costs or restrictions on capital formation. Assumption of the economic risk of investment is a critical factor in determining whether a security holder purchased the securities for distribution.[55] After observing the operation of Rule 144 since the 1997 amendments, with regard to reporting companies, we believe that holding securities for six months is a reasonable indication that an investor has assumed the economic risk of investment in those securities.[56]

Because we are concerned that the market does not have sufficient information and safeguards with respect to non-reporting companies, we propose that the holding period for restricted securities in non-reporting companies

[45] See proposed Preliminary Note to Rule 144. Similar language can also be found in other rules such as in the Preliminary Note to Securities Act Rule 144A [17 CFR 230.144A].

[46] Release No. 33–7390 (Feb. 28, 1997) [62 FR 9242]. See 17 CFR 230.144(d) and (k).

[47] These other conditions included the availability of current public information, the volume of sale limitations, the manner of sale limitations, and the filing of a notice. See 17 CFR 230.144(c), (e), (f) and (h).

[48] See letters from American Society of Corporate Secretaries (ASCS); Association for Investment Management & Research (AIMR); Association of the City Bar of New York (NY City Bar); Baltimore Gas & Electric (BG&E); Investment Company Institute (ICI); Charles Lilienthal (Lilienthal); Loeb & Loeb; New York Bar Association (NY Bar); Schwartz Investments; Sullivan & Cromwell; Testa, Hurwitz & Thibeault (Testa Hurwitz); and Willkie, Farr & Gallagher (Willkie Farr).

[49] See letters from Argent and The Corporate Counsel (Corporate Counsel).

[50] See letters from ABA; joint letter from Goldman Sachs, JP Morgan, Morgan Stanley and Salomon Brothers (Four Brokers); Lehman Brothers; Merrill Lynch; Morgan Stanley; Regional Investment Bankers Association (Regional Bankers); Securities Industry Association (SIA); and Smith Barney.

[51] As proposed, the six-month holding period would apply to securities of the issuer that is, and has been for at least 90 days before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. As proposed, a non-reporting issuer would be an issuer that is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. This delineation between reporting and non-reporting companies and the 90-day waiting period for reporting companies are similar to the provisions in Rule 144(c).

[52] See proposed Rule 144(d)(1)(i). These proposed amendments would not change the Rule 144(d) requirement that, if the acquiror takes by purchase, the holding period will not commence until the full purchase price is paid.

[53] See Section VI. of this release.

[54] 17 CFR 230.901 through 230.905 and Preliminary Notes.

[55] See Release No. 33–5223 (Jan. 14, 1972) [37 FR 591].

[56] See also letter to John W. White, Director, SEC Division of Corporation Finance, from Keith F. Higgins, Chair, Committee on Federal Regulation of Securities, ABA Section of Business Law (Mar. 22, 2007) (''the 2007 ABA Letter''), available at *http://www.abanet.org/buslaw/committees/CL410000pub/comments/20070322000000.pdf.* The 2007 ABA Letter recommended that the Commission reconsider the 1997 proposals and shorten the Rule 144(d) holding period to six months and the Rule 144(k) period to one year. The letter pointed out that, in light of the increased volatility of today's marketplace, holding periods of six months and one year represent greater economic risk than they did when the current holding periods were adopted, and they are more than long enough to ensure that a purchaser has assumed the economic risk of investment.

would remain at one year for affiliates and non-affiliates.[57] However, as discussed below, we propose to eliminate the resale restrictions imposed on non-affiliates of non-reporting companies after the one-year holding period. Non-affiliates of non-reporting companies would be subject to no other Rule 144 condition after meeting the one-year holding period under the proposals.[58]

b. Tolling Provision

In 1990, we eliminated a Rule 144 provision that tolled the holding period of a security holder maintaining a short position in, or any put or other option to dispose of, securities equivalent to the restricted securities owned by the security holder.[59] We eliminated this provision in conjunction with an amendment to broaden a security holder's ability to tack the holding periods of prior owners to the security holder's own holding period.[60]

Despite the prior elimination of the tolling provision, we are concerned about the effect of hedging activities designed to shift the economic risk of investment away from the security holder with respect to restricted securities to be resold under Rule 144.[61] It becomes more difficult to conclude that the security holder who engages in hedging transactions, and thereby transfers the economic risk of the investment to a third party, soon after acquiring the security, has held the security for investment purposes and not with a view to distribution.

For example, prior to the expiration of the required holding period, a security holder may enter into an equity swap agreement with a third party, under which the security holder exchanges the dividends received on the restricted securities for the dividends on, for example, a securities index. In addition, that shareholder may agree to exchange, at a set date, any price change in the security since the date of the agreement for any price change in the securities index. The effect of such a transaction would be the economic equivalent of selling the restricted securities before the holding period has expired and purchasing the securities index.

The concern regarding hedging transactions is particularly acute if we provide for a six-month holding period requirement, as proposed. At the time of the 1990 amendments, Rule 144 provided for a two-year holding period before a security holder could sell limited amounts of restricted securities, and a three-year period before a non-affiliate security holder could sell an unlimited amount of the securities. The proposed six-month holding period requirement could make the entry into such hedging arrangements significantly easier and less costly because they would cover a much shorter period.

The 1997 proposing release proposed several alternatives for addressing these concerns.[62] Seven commenters recommended that we adopt measures to eliminate or restrict hedging activities during the holding period.[63] Six commenters recommended maintaining the status quo.[64] Six commenters suggested that we adopt a safe harbor for certain hedging activities that would be deemed permissible under Rule 144.[65] Because the proposed shortening of the holding period requirement would make hedging arrangements significantly easier, we believe that it is appropriate to reintroduce a tolling provision to Rule 144. Therefore, we propose to add a new paragraph to Rule 144 to toll the holding period for restricted securities of Exchange Act reporting companies while an affiliate or a non-affiliate is engaged in certain hedging transactions.[66]

We also propose to expand the scope of the earlier tolling provision, which covered only short sales and options. Since 1990, many new risk-hedging products such as equity swaps and single stock futures have been introduced into the market that also have the effect of limiting or eliminating risk. We are proposing to exclude from the holding period any period in which the security holder had a short position, or had entered into a ''put equivalent position,'' as defined by Exchange Act Rule 16a–1(h),[67] with respect to the same class of securities (or in the case of nonconvertible debt, with respect to any nonconvertible debt securities of the same issuer).

Given that the proposed tolling provision would work in conjunction with the Rule 144 provisions that permit tacking of holding periods,[68] a selling security holder would be required to determine whether a previous owner of the securities had engaged in hedging activities with respect to the securities, if the holding period includes a period in which a previous owner held the securities. Accordingly, we propose to provide that the holding period should not include any period in which the previous owner held a short position or put equivalent position with respect to the securities. There would be no tolling of the previous owner's holding period, if the security holder for whose account the securities are to be sold reasonably believes that no such short or put equivalent position was held by the previous owner.[69] In other words, the proposed provision would permit a security holder to tack the period during which the security holder reasonably believes that the previous owner did not engage in hedging activities to his or her holding period. We are proposing a ''reasonable belief'' standard, because it may be difficult for a selling security holder to determine definitively whether a previous owner had engaged in hedging activities with respect to the securities.

Also, we believe that the proposed tolling provision should not result in a

[57] See proposed Rule 144(d)(1)(ii). The 2007 ABA letter also recommended that in the case of non-reporting companies, the Commission should consider permitting resales without restriction under Rule 144 after a one-year holding period.

[58] The proposals would delete paragraph (k) of Rule 144 and permit non-affiliates to resell restricted securities of non-reporting companies freely after one year.

[59] See Release No. 33–6862 (Apr. 23, 1990) [55 FR 17933].

[60] We reasoned that, ''a single period running from the date of the purchase from the issuer or an affiliate of the issuer is sufficient to prevent the distribution by the issuer of securities to the public.'' Release No. 33–6862.

[61] For a discussion on hedging arrangements in prior releases, see Section IV.B of the 1997 proposing release and Section II.A of Release No. 33–7187 (Jul. 10, 1995) [60 FR 35645].

[62] See the 1997 proposing release. In that release, we proposed five different alternatives. These were the following: (1) Make the Rule 144 safe harbor unavailable to persons who hedge during the restricted period; (2) independent of Rule 144, promulgate a rule that would define a sale for purposes of Section 5 to include specified hedging transactions; (3) adopt a shorter holding period during which hedging could not occur without losing the safe harbor; (4) reintroduce a tolling provision in Rule 144 similar to the provision that was included prior to 1990; or (5) maintain the status quo with no specific prohibition against hedging. We believe that the proposed tolling provision in this release offers a balanced approach to addressing hedging activities in Rule 144.

[63] See letters from ABA; AIMR; Argent; ASCS; Constantine Katsoris; Corporate Counsel; and Schwartz Investments.

[64] See letters from Bear Stearns; BG&E; Intel; Paine Webber; Wilkie Farr; and XXI Securities.

[65] See letters from Four Brokers; NY Bar; SIA; Merrill Lynch; Citibank; and Lehman Brothers.

[66] See proposed Rule 144(d)(3)(xi).

[67] 17 CFR 240.16a–1(h). Rule 16a–1(h) defines a ''put equivalent position'' as a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option position.

[68] ''Tacking'' the holding period is the ability of the security holder to count the period that the securities are held by a previous owner as part of his or her own holding period for the purposes of Rule 144(d). Further discussion about tacking is located in Section II.E.2 of this release.

[69] See proposed Rule 144(d)(3)(xi)(C). If the security holder relying on Rule 144 is unable to determine that the previous owner did not engage in hedging activities with respect to the securities, then the security holder should omit the period in which the security holder is not able to determine whether the previous owner had a short position or a put equivalent position when calculating the holding period under Rule 144(d).

longer holding period than under the current rule. Because the fact that the current rule does not toll the one-year holding period while the security holder has engaged in hedging activities has not raised concerns, we believe, on balance, that one year between the acquisition date of the securities from the issuer or affiliate of the issuer and the resale date sufficiently protects against the indirect distribution of the securities by the issuer to the public. The proposed rule would therefore impose a ceiling on the proposed tolling provision so that, regardless of the security holder's hedging transactions, the holding period, as computed under all other paragraphs in Rule 144(d), would in no event extend beyond one year.[70] Under the proposed rules, security holders who wish to rely on Rule 144 to resell restricted securities of non-reporting companies already would be required to hold their securities for at least one year, and therefore would not be subject to the tolling provision.

In concert with the proposed tolling provision, we also propose other related changes to Rule 144. First, we propose to require that information be provided in Form 144 regarding any short or put equivalent position held with respect to the securities prior to the resale of the securities. A similar requirement was part of Form 144 before the tolling provision was eliminated in 1990.[71]

The second related change concerns the manner of sale requirements in Rule 144(f), which we propose to retain for equity securities of affiliates. One option to meet the manner of sale requirements is to sell the securities through ''brokers' transactions'' within the meaning of Section 4(4) of the Securities Act.[72] Rule 144(g) specifies transactions by a broker that are deemed to be included as ''brokers' transactions.'' One criteria for these ''brokers' transactions'' is that the broker, after reasonable inquiry, is not aware of circumstances indicating that the person for whose account the securities are sold is an underwriter with regard to the securities or that the transaction is a part of a distribution of the securities of an issuer. Existing Note (ii) of Rule 144(g)(3)[73] contains a list of some questions that brokers should ask in order to satisfy this inquiry. We are proposing to amend Note (ii) to Rule 144(g)(3) to explain that in order to satisfy the reasonable inquiry requirement, a broker should also inquire into, if the securities have been held for less than one year, the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account the securities are to be sold, whether such person has made inquiries into the existence and character of any short position or put equivalent position held by the previous owner of the securities, and the results of such person's inquiries.[74] We believe that an inquiry into such positions would not impose an undue burden on brokers as part of their existing inquiry. We believe that this proposed amendment would be a valuable component in determining and monitoring whether security holders have met their holding period requirement under Rule 144.

3. Significant Reduction of Requirements Applicable to Non-Affiliates

Non-affiliates currently are required to hold their restricted securities for one year under Rule 144(d). During this one-year period, non-affiliates are not permitted to resell any securities under the rule. When selling restricted securities that have been held for between one and two years, non-affiliates, like affiliates, are subject to all other applicable conditions of Rule 144, including the requirement that current information be publicly available about the issuer of the securities, limitations on the amount of securities that can be sold in any three-month period, manner of sale limitations and Form 144 filing requirements.[75] We believe that, for the most part, holding the securities for the length of the holding period should be a sufficient indication that these non-affiliates have assumed the economic risk of investment in those securities.[76] As such, we believe that it is appropriate to reduce the complexity of resale restrictions that may inhibit sales by, and impose costs on, non-affiliates.[77]

Because Rule 144 is relied upon by many individuals to resell their restricted securities, we believe that it would be particularly helpful to streamline and reduce the complexity of the rule as much as possible while retaining its integrity. We therefore propose to reduce the restrictions for a person who is not an affiliate of the issuer at the time of the sale of the securities and has not been an affiliate during the three months prior to the sale of the securities. These non-affiliates with restricted securities of reporting companies would be permitted to resell their securities after their holding period, subject only to the requirement in Rule 144(c) that current information regarding the issuer of the securities be publicly available.[78] We preliminarily believe that retaining the current public information requirement would continue to be important in this instance so that the market has adequate information regarding the issuer of the securities and also would not impose an undue burden on a non-affiliate selling security holder. Non-affiliates of both reporting and non-reporting companies would be able to freely resell their restricted securities publicly one year after the acquisition date of the securities (as computed under Rule 144(d)) and without having to comply with any of the other conditions of the rule.[79]

The proposed requirements for the resale of restricted securities held by affiliates and non-affiliates under Rule 144 can be summarized as follows:

[70] See proposed note to Rule 144(d)(3)(xi).

[71] See Release No. 33–5223.

[72] 15 U.S.C. 77d(4).

[73] 17 CFR 230.144(g)(3).

[74] See proposed Paragraph 2 of Note 2 to Rule 144(g)(3).

[75] See 17 CFR 230.144(b) and (d). A person who has held restricted securities for more than two years and has not been an affiliate for at least the most recent three months may resell those securities without complying with Rule 144's other requirements. See 17 CFR 230.144(k).

[76] We have concerns, however, about the indirect distribution of securities through resales by non-affiliates when those non-affiliates hold securities in shell companies. As discussed below, we propose to codify the staff's interpretive position that security holders cannot rely on Rule 144 in the resale of securities of reporting and non-reporting shell companies.

[77] While the SEC Advisory Committee on Smaller Public Companies did not specifically address Rule 144 in its final report, the Committee acknowledged the need to reduce the complexity of our rules for the benefit of smaller companies. See Final Report of the Advisory Committee on Smaller Public Companies to the United States Securities and Exchange Commission (Apr. 23, 2006), available at *http://www.sec.gov/info/smallbus/acspc.shtml*. See also Report on the Advisory Committee on the Capital Formation and Regulatory Process (Jul. 24, 1996) (suggesting that the SEC minimize the resale restrictions on restricted securities), available at *http://www.sec.gov/news/studies/capform.htm*.

[78] See proposed Rule 144(b)(1)(i). As set forth in paragraphs (c) and (d) of the proposed rules, a reporting company is an issuer that is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act. A non-reporting company is an issuer that is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act.

[79] See proposed Rule 144(b)(1).

	Affiliate or person selling on behalf of an affiliate	Non-affiliate (and has not been an affiliate during the prior three months)
Restricted Securities of Reporting Companies.	*During six-month holding period**—no resales under Rule 144 permitted. *After six-month holding period**—may resell in accordance with all Rule 144 requirements including: • Current public information, • Volume limitations, • Manner of sale for equity securities, and • Filing of Form 144.	*During six-month holding period**—no resales under Rule 144 permitted. *After six-month holding period* but before one year*—may resell in accordance with the current public information requirement. *After one year*—unlimited public resale under Rule 144; need not comply with other Rule 144 requirements.
Restricted Securities of Non-Reporting Companies.	*During one-year holding period*—no resales under Rule 144 permitted. Tolling provision does not apply. *After one-year holding period*—may resell in accordance with all Rule 144 requirements except holding period, including: • Current public information, • Volume limitations, • Manner of sale for equity securities, and • Filing of Form 144.	*During one-year holding period*—no resales under Rule 144 permitted. Tolling provision does not apply. *After one-year holding period*—unlimited public resale under Rule 144; need not comply with other Rule 144 requirements.

* Such holding period may be longer than six months (but not longer than one year), depending on hedging activities.

Request for Comment

• Should the holding period requirement for restricted securities of reporting companies be shortened to six months? Is six months sufficient time to indicate that the affiliate has not acquired the securities for distribution? Are there any concerns that six months would lead to an increase in abuse with regard to the resale of restricted securities? Should a six-month holding period requirement apply to restricted securities of reporting companies held by non-affiliates as well as affiliates? If you suggest that either affiliates or non-affiliates should be required to comply with a holding period that is shorter than six months, what objective criteria demonstrate that such holding period is sufficient to indicate that the security holder has not acquired the securities for distribution?

• Should the one-year holding period requirement continue to apply to restricted securities of non-reporting companies held by non-affiliates as well as affiliates? Should the holding period for restricted securities of non-reporting companies also be shortened to six months? Should affiliates and non-affiliates of non-reporting companies be subject to the same holding period, or should they be required to comply with a longer or shorter holding period?

• For the purposes of the holding period, is it appropriate that a reporting company is an issuer that is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act? Is there a more appropriate formulation?

• Should we amend Regulation S to conform the one-year distribution compliance period in Rule 903(b)(3)(iii) [80] to the proposed six-month holding period? When Regulation S was amended in 1998,[81] the distribution compliance period applicable to U.S. companies (Category 3 issuers) was conformed to the one-year holding period under Rule 144. The purpose of the distribution compliance period in Regulation S is to ensure that during the offering period and the subsequent aftermarket trading that takes place offshore, the persons relying on the Rule 903 safe harbor (issuers, distributors and their affiliates) are not engaged in an unregistered, non-exempt distribution into the United States capital markets. We are now proposing to shorten the Rule 144 holding period for the resale of restricted securities of Exchange Act reporting companies to six months. Should we amend Regulation S to conform the one-year distribution compliance period for reporting U.S. companies under Rule 903(b)(3)(iii) to the proposed six-month holding period under Rule 144? In light of problematic practices with respect to offerings of U.S. companies under Regulation S, should the distribution compliance period for reporting U.S. companies remain one year consistent with the longest distribution compliance period that would be applicable to securities offered under Regulation S and with the default one-year holding period under Rule 144?

• Is it appropriate to retain the current public information requirement for non-affiliates with restricted securities in reporting companies during the period between the end of the six-month holding period (which may be longer depending on hedging activities) and one year after the securities were acquired? Should non-affiliates be subject to the current public information condition for a longer period of time? If so, how long?

• Should non-affiliates with restricted securities of non-reporting companies remain subject after the holding period to all conditions of Rule 144 for an additional year, as under the current rule? Are there any specific conditions to which non-affiliates with restricted securities of reporting companies should still be subject after the holding period, other than the current public information requirement? Are there any specific conditions to which non-affiliates with restricted securities of non-reporting companies should still be subject after the holding period? For example, should non-affiliates continue to be subject to volume limitations during a specified period of time after the holding period? What should that specified time be (*e.g.*, six months, one year)? Should non-affiliates be subject to some sort of notice requirement when they have made a sale above the specified threshold amount? What are the benefits if non-affiliates are still subject to such requirements or concerns if they are not?

• Is the proposed language requiring that the security holder toll the holding period if the holder had ''a short position, or had entered into a 'put equivalent position' as defined by Exchange Act Rule 16a–1(h)'' appropriate? Does the proposed tolling provision sufficiently cover the hedging transactions that would result in the circumvention of the purposes of Rule 144? Does it cover too few or too many hedging transactions? If too many, what specific forms of hedging transactions should be excluded and why? If too few,

[80] 17 CFR 230.903(b)(3)(iii).

[81] *Offshore Offers and Sales,* Release No. 33–7505 (Feb. 17, 1998).

what other forms of hedging transactions should be covered?

• Given that the proposed tolling provision is not applicable if the security holder has held the securities for one year, would a security holder be able to determine whether and how long previous owners entered into hedging transactions in order to properly calculate the holding period? Would the proposed tolling provision make it too difficult to determine whether a security holder has complied with the holding period requirement? By what other methods could we ensure that persons do not attempt to skirt the purposes of Rule 144 by engaging in hedging transactions?

• Should security holders be held to a ''reasonable belief'' standard with regard to the previous owner's hedging activities, or is a ''bona fide belief'' or some other standard more appropriate? Should we specify what statements or documentation could security holders rely upon in order to formulate a reasonable belief that the previous owner has not engaged in hedging activities in the securities? If so, what documentation should they be permitted to rely upon?

• Is it unnecessarily restrictive to require tolling if the security holder has engaged in hedging transactions with respect to any of his or her securities of the same class (or, in the case of nonconvertible debt, with respect to any nonconvertible debt securities of the same issuer)? Are there any circumstances in which the proposed tolling provision would not be appropriate? If so, describe the circumstances and explain why the proposed tolling provision would not be appropriate.

• Should we address hedging in a different manner? For example, should we preclude security holders who hedge securities during the holding period from relying on Rule 144? Should we treat such hedging transactions as ''sales'' of the securities?

• Should the tolling provision apply only during the first year after the date of the acquisition of the securities from the issuer or affiliate? Is one year the appropriate time period, or should the period be longer than one year?

• Is there any reason why we should not amend Note (ii) to Rule 144(g)(3) to add that if the securities have been held for less than one year, the broker's reasonable inquiry should also include an inquiry into the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account the securities are to be sold and whether that person has made inquiries into the existence and character of any short position held by a previous owner with regard to the securities? Is the proposed amendment sufficiently clear? Does the proposed amendment place an undue burden on the broker or the holder of the securities? What level of inquiry should the brokers be required to conduct into the security holder's hedging transactions or the previous owner's hedging transactions? What statements or documentation, if any, regarding hedging transactions should security holders be required to provide to brokers?

• What level of due diligence did brokers conduct to determine compliance with the holding period requirement before we eliminated the Rule 144 tolling provision in 1990? Were there any problems with tracking hedging positions when the tolling provision was in place, especially in relation to the limited provisions that permitted tacking that existed prior to 1990?

• Is there any reason we should not amend Form 144 to require disclosure of hedging transactions? Is the proposed disclosure appropriate and should it be changed in any way?

C. Elimination of Manner of Sale Limitations for Debt Securities

Rule 144(f) currently requires that securities be sold in ''brokers'' transactions,''[82] or in transactions directly with a ''market maker,'' as that term is defined in Section 3(a)(38) of the Exchange Act.[83] Additionally, the rule prohibits 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. These manner of sale limitations do not apply to securities sold for the account of a non-affiliate of an issuer after the two-year period in Rule 144(k) has elapsed.[84]

The limitations on manner of sale were intended to assure that special selling efforts and compensation arrangements usually associated with a distribution are not present in a Rule 144 sale.[85] In the 1997 proposing release, we proposed to eliminate the manner of sale requirement entirely. Commenters were split as to that proposal. Eleven commenters supported the proposal,[86] while seven commenters opposed it.[87] Commenters who opposed the proposal noted that brokers act as gatekeepers to ensure selling shareholders are complying with the requirements of Rule 144. Two commenters supported the proposal because transfer agents would not transfer shares without a release from the issuer.[88]

We agree that, as financial intermediaries, brokers serve an important function as gatekeepers for promoting compliance with Rule 144,[89] and we are concerned that eliminating the manner of sale limitations for equity securities may lead to abusive transactions. However, we believe that the fixed income securities market does not raise the same concerns, and that the manner of sale provision may place an unnecessary burden on the resale of such securities.[90] Such securities generally are traded in dealer transactions in which the dealer seeks buyers for securities to fill sell orders instead of through the means prescribed in Rule 144(f). Thus, we are proposing that the manner of sale limitations would not apply to resales of debt securities.[91] This would allow holders of debt securities greater flexibility in the resale of their securities, including, as discussed in the 1997 proposing release, the option to privately negotiate the resale of the securities.[92]

In addition, we believe that non-participating preferred stock, which has debt-like characteristics, and asset-backed securities, where the predominant purchasers are institutional investors, including financial institutions, pension funds, insurance companies, mutual funds and money managers,[93] should be treated similarly to debt securities. Thus, we have included these securities in the ''debt securities'' category for the

[82] Current Rule 144(g) defines the term for purposes of Rule 144.

[83] 15 U.S.C. 78c(a)(38).

[84] The manner of sale requirements also do not apply to securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate, provided the estate or beneficiary is not an affiliate of the issuer.

[85] Release No. 33–5186 (Sept. 10, 1971) [36 FR 18586].

[86] See letters from ABA; AT&T; ASCS; Intel; BG&E; Lehman Brothers; Morgan Stanley; NY Bar; NY City Bar; Sullivan & Cromwell; and Testa Hurwitz.

[87] See letters from Corporate Counsel; Matthew Crain; Constantine Katsoris; Merrill Lynch; Regional Bankers; SIA; and Smith Barney.

[88] See letters from ASCS and BG&E.

[89] Brokers also must comply with the criteria set forth in Rule 144(g) in order to claim the ''brokers'' transactions'' exemption under Section 4(4) of the Securities Act.

[90] See also the 2007 ABA Letter.

[91] See proposed Rule 144(f). As discussed above, we also propose to eliminate the manner of sale limitations for resales by non-affiliates.

[92] Section III.C. of the 1997 proposing release.

[93] See Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

purpose of the proposed revisions to the manner of sale limitations in Rule 144.[94]

Request for Comment

- Would eliminating the manner of sale requirement be appropriate for debt securities, as proposed? Is there a need for brokers to serve as an intermediary for such a secondary market? Would transfer agents be able to adequately confirm compliance with Rule 144?
- Should we eliminate the manner of sale requirement for equity securities as well? If so, why? What problems or abuses may arise if the proposal were extended to equity securities? Would removal of the manner of sale requirements for equity securities diminish security transaction transparency by encouraging more privately negotiated transactions? If so, would the markets be adversely affected, particularly for stocks of smaller companies and more thinly traded securities?
- Are there other purposes served by the manner of sale requirements that justify retaining those requirements? How would the removal of the manner of sale requirements affect participants, such as transfer agents, brokers and market makers, in Rule 144 transactions? Would transfer agents assume a greater role in determining compliance with the resale provisions? How would removing the manner of sale limitations affect brokers' obligations with respect to their ability to qualify for the ''brokers' transactions'' exemption under Section 4(4) of the Securities Act?
- Is it appropriate to include asset-backed securities and non-participating preferred stock as debt securities for the purposes of this rule? Are there any other types of securities to which the limitations on manner of sale should not apply? If so, why?
- Are there any other conditions in Rule 144 to which debt securities should not be subject? For example, should we raise the volume limitations in Rule 144(e) for debt securities, or eliminate the volume limitations for debt securities altogether? [95]

D. Increase of the Form 144 Filing Thresholds

Rule 144(h) requires a selling security holder to file Form 144 if the security holder's intended sale exceeds either 500 shares or $10,000 within a three-month period.[96] These filing thresholds have been in place since 1972.[97] In the 1997 proposing release, we proposed to increase the filing thresholds to 1,000 shares or $40,000. Thirteen commenters supported raising the filing threshold and no commenters opposed it.[98] Six commenters suggested that we eliminate Form 144.[99] One commenter suggested raising the threshold to $100,000.[100] Another commenter suggested raising it to $250,000.[101]

As discussed above, under the proposed rules, only affiliates of the issuer would be required to file a notice of proposed sale on Form 144 when relying on Rule 144. We now are proposing to increase the Form 144 filing thresholds to trades of 1,000 shares or $50,000 within a three-month period for affiliates.[102] The purpose of raising the dollar threshold to $50,000 is to adjust for inflation since 1972.[103] We believe that the 1,000 share threshold is an appropriate alternate threshold that would capture trades which merit notice but for which the dollar amount of the trades may not be as significant. In addition to this proposed amendment to Rule 144(h), we solicit comment below on how best to coordinate the filing deadline for Form 144 with the filing deadline for Form 4 and permit affiliates subject to Section 16 filing requirements to, at their option, satisfy their Form 144 filing requirements by timely filing a Form 4 to report the sale of their securities.

Request for Comment

- Should the dollar threshold be higher or lower than proposed (*e.g.*, $25,000, $75,000, or $100,000)? Should the threshold based on the number of shares be higher or lower than proposed (*e.g.*, 500, 1,500, 2,000 or 2,500 shares)?
- Should the threshold be based solely on the number of shares sold, or solely on the dollar amount of the transaction? Should it be based on a formula using both variables? Should we allow for adjustments to the dollar amount threshold every five years that would reflect changes due to inflation?
- Should thresholds be based on a different number such as a percentage of the company's public float, or a different self-adjusting index?
- If you believe the thresholds should be different, please explain why your suggested threshold would be appropriate, including information and data to support your beliefs.

E. Codification of Several Staff Positions

The following are proposed codifications of staff positions issued by the Division of Corporation Finance. These codifications should simplify the rule by making these staff positions more transparent and readily available to the public. The first three proposals were included in the 1997 proposing release. The last four proposals are new proposed codifications of existing staff positions.

1. Securities Acquired Under Section 4(6) of the Securities Act Are Considered ''Restricted Securities''

The 1997 proposing release proposed to codify the Division of Corporation Finance's interpretive position that securities acquired from the issuer pursuant to an exemption from registration under Section 4(6) of the Securities Act [104] are considered ''restricted securities'' under Rule 144(a)(3).[105] We did not receive any comments on this proposal.

Section 4(6) provides for an exemption from registration for an offering that does not exceed $5,000,000 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.[106] Because the resale status of securities acquired in Section 4(6) exempt transactions should be the same as securities received in other non-public offerings that are included in the definition of restricted securities, we

[94] See proposed Rule 144(f). This proposal is for Rule 144(f) purposes only and does not affect the classification of these securities as debt or equity for other purposes. This treatment is consistent with the treatment of such securities under Regulation S. See Release No. 33–7505.

[95] See discussion in 2007 ABA Letter.

[96] 17 CFR 230.144(h).

[97] The 500 share and $10,000 thresholds have remained constant since Rule 144's inception in 1972. However, in 1978, we shortened the relevant time period during which sales volume is to be calculated from six months to three months to conform to a change shortening the time period in which sale volume should be calculated for the purposes of the Rule 144 volume limitation condition from six months to three months. Release No. 33–5995 (Nov. 8, 1978) [43 FR 54229].

[98] See letters from ABA; ASCS; AT&T; BG&E; Corporate Counsel; Merrill Lynch; Morgan Stanley; NY Bar; NY City Bar; Regional Bankers; SIA; Smith Barney; and Sullivan & Cromwell.

[99] See letters from ABA; Benesch, Friedlander, Coplan & Aranoff (Benesch Friedlander); NY Bar; NY City Bar; and Sullivan & Cromwell.

[100] See letter from ABA.

[101] See letter from NY Bar.

[102] See proposed Rule 144(h).

[103] The adjustment would be approximately $42,000 if based on the Personal Consumption Expenditures Chain-Type Price Index, as published by the Department of Commerce. In addition, if based on the Consumer Price Index, the adjustment would be approximately $50,000. To achieve a round number, we are proposing to raise the filing threshold to $50,000.

[104] 15 U.S.C. 77d(6). Section 4(6) was included in the Securities Act pursuant to the Small Business Investment Incentive Act of 1980 [Pub. L. No. 96–477 (Oct. 21, 1980)].

[105] 17 CFR 230.144(a)(3). See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 104 (Rule 144(a)(3)), Question No. 104.03.

[106] See 15 U.S.C. 77d(6).

believe that securities acquired under Section 4(6) should be defined as restricted securities for purposes of Rule 144. Therefore, we are proposing an amendment to Rule 144 to codify the staff's position that securities acquired under Section 4(6) of the Securities Act are ''restricted securities'' under Rule 144(a)(3).[107]

2. Tacking of Holding Periods When a Company Reorganizes Into a Holding Company Structure

The 1997 proposing release also proposed codifying the Division of Corporation Finance's interpretive position that holders may tack the Rule 144 holding period in connection with transactions made solely to form a holding company.[108] In ''tacking,'' holders may count the period that the securities are held before the transaction made to form a holding company as part of period they hold the securities used to meet the Rule 144(d) requirement. We did not receive any comments on this proposal.

We are proposing again to codify that interpretive position.[109] This provision would permit tacking of the holding period if the following three conditions are satisfied:

- The newly formed holding company's securities are issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;
- Security holders receive securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor company, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and
- Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

In such transactions, tacking would be appropriate because the securities being exchanged are substantially equivalent, and there is no significant change in the economic risk of the investment in the restricted securities. We believe that the codification of this interpretation and as well as the codification of the following two interpretations below would assist security holders in determining whether they have met the Rule 144(d) holding period requirement.

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

The 1997 proposing release proposed codifying the Division of Corporation Finance's position that if the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be 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.[110] As noted in the 1997 release, Rule 144 does not state whether the surrendered securities must have been convertible by their terms in order for tacking to be permitted, which led to some confusion on how to calculate the Rule 144 holding period. We did not receive any comments on this proposal.

We are proposing again these amendments to Rule 144(d)(3)(ii).[111] In addition, we are proposing a note to this provision that clarifies the Division's position that if:

- The original securities do not permit cashless conversion or exchange by their terms;
- The parties amend the original securities to allow for cashless conversion or exchange; and
- The security holder provides consideration, other than solely securities of the issuer, for that amendment,

then shares will be deemed to have been acquired on the date that the original securities were so amended.[112]

4. Cashless Exercise of Options and Warrants

Several commenters responding to the 1997 release suggested that we codify the Division of Corporation Finance's position that, upon a cashless exercise of options or warrants, the newly acquired underlying securities are deemed to have been acquired when the corresponding options or warrants were acquired, even if the options or warrants originally did not provide for cashless exercise by their terms.[113] We are proposing to revise Rule 144 to codify that position in response to those comments.[114]

In addition, we are proposing to add two notes to this new paragraph. The first note would codify the Division's position that if:

- The original options or warrants do not permit cashless exercise by their terms; and
- The holder provides consideration, other than solely securities of the issuer, to amend the options or warrants to allow for cashless exercise,

then the options or warrants would be deemed to have been acquired on the date that the original options or warrants were so amended.[115] This treatment is analogous to our treatment of conversions and exchanges.

The second note would codify the Division's position that the grant of certain options or warrants that are not purchased for cash or property does not create any investment risk in the holder in a manner that would justify identification of the holding period of the securities received upon exercise of the options or warrants with that of the options or warrants.[116] This is the case for employee stock options. The note would clarify that in such instances, the holder would not be allowed to tack the holding period of the option or warrant and would be deemed to have acquired the underlying securities on the date the option or warrant was exercised, if the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise.

5. Aggregation of Pledged Securities

In response to suggestions from commenters, we are proposing to add a note to Rule 144(e)(2)(ii)[117] that would address calculation of the volume of securities that a pledgee of securities may sell.[118] It would codify the Division of Corporation Finance's position that, so long as the pledgees are not the same ''person'' under Rule 144(a)(2), a pledgee of securities may sell the pledged securities without having to aggregate the sale with sales by other pledgees of the same securities from the same pledgor, as long as there is no concerted action by those pledgees.[119]

[107] See proposed Rule 144(a)(3)(viii).

[108] *Morgan Olmstead* (Jan. 8, 1988).

[109] See proposed Rule 144(d)(3)(ix).

[110] See *Planning Research Corp.* (Dec. 8, 1980).

[111] See proposed Rule 144(d)(3)(ii).

[112] See *Morgan Stanley & Co., Inc.* (June 30, 1993).

[113] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 212 (Rule 144(d)(3)), Interpretation No. 212.01.

[114] See proposed Rule 144(d)(3)(x).

[115] See *Morgan Stanley & Co., Inc.* (June 30, 1993).

[116] See *Morgan Stanley & Co., Inc.* (June 30, 1993) and *Malden Trust Corporation* (Feb. 21, 1989).

[117] 17 CFR 230.144(e)(2)(ii).

[118] If the proposed amendments eliminating certain requirements for non-affiliates are adopted, then the volume limitations in Rule 144(e) would apply only to affiliates.

[119] See the Division of Corporation Finance's Compliance and Disclosure Interpretations on Rule 144 (Updated April 2, 2007), at Section 216 (Rule

Continued

As an example, assume that a security holder (the pledgor) pledges the securities he owns in Company A to two banks, Bank X and Bank Y (the pledgees). If the pledgor defaults:

- Upon default, Bank X does not have to aggregate its sales of Company A securities with Bank Y's sales of Company A securities unless Bank X and Bank Y are acting in concert, but
- Bank X individually still must aggregate its sales with the pledgor's sales, and
- Bank Y individually still must aggregate its sales with the pledgor's sales.

Provided that the loans and pledges are bona fide transactions and there is no concerted action among pledgees and no other aggregation provisions under Rule 144(e) apply, we do not believe that extra burdens on pledgees to track and coordinate resales by other pledgees are warranted.

6. Treatment of Securities Issued by ''Reporting and Non-reporting Shell Companies''

A blank check company is a company that:

- Is in the development stage;
- Has no specific business plan or purpose, or has indicated that its business plan is to merge with or acquire an unidentified third party; and
- Issues penny stock.[120]

Such companies historically have provided opportunity for abuse of the federal securities laws, particularly by serving as vehicles to avoid the registration requirements of the securities laws.[121] Rule 419 under the Securities Act [122] was adopted in 1992 to control the extent to which such companies are able to access funds from a public offering.

In 2005, we amended Securities Act Rule 405 to define a ''shell company'' to mean a registrant, other than an asset-backed issuer, that has:

(1) no or nominal operations; and

(2) either:

- no or nominal assets;
- assets consisting solely of cash and cash equivalents; or
- assets consisting of any amount of cash and cash equivalents and nominal other assets.[123]

On January 21, 2000, the Division of Corporation Finance concluded in a letter to NASD Regulation, Inc. that Rule 144 is not available for the resale of securities issued by companies that are, or previously were, blank check companies.[124] In an effort to curtail misuse of Rule 144 by security holders through transactions in the securities of blank check companies, we are proposing to codify this position with some modifications.[125] First, we propose to modify the staff interpretation to address securities of all companies, other than asset-backed issuers, that meet the definition of ''shell company.'' [126] These companies would include any company, including a blank check company, that meets the definition. The category of companies to whom the staff interpretation is proposed to apply would be broader than the definition of ''shell company'' in Rule 405, however, as it would apply to any ''issuer'' meeting that standard, whereas the Rule 405 definition refers only to ''registrants.'' We believe that this provision better describes the companies that are the subject of the abuse that the staff interpretation is designed to address. For the purposes of the discussion in this release only, we call these companies, ''reporting and non-reporting shell companies.'' Under the proposed rule, a person who wishes to resell securities issued by a company that is, or was, a reporting or a non-reporting shell company, other than a business combination related shell company,[127] would not be able to rely on Rule 144 to sell the securities.

Second, because the reasons for prohibiting reliance on Rule 144 do not appear to be present after a reporting company has ceased to be a shell company and there is adequate disclosure in the market that would serve to protect against further abuse,[128] we propose to permit the availability of Rule 144 for resales under provisions that are similar to our provisions that permit the use of a Securities Act Form S–8 [129] registration statement by reporting companies that were formally shell companies.[130] We propose to permit reliance on Rule 144 for resales by a security holder when:

- the issuer of the securities that was formally a reporting or non-reporting shell company has ceased to be a shell company;
- the issuer of the securities is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act;
- the issuer of the securities has filed all reports and material required to be filed during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); and
- at least 90 days have elapsed from the time the issuer files current ''Form 10 information'' with the Commission reflecting its status as an entity that is not a shell company.

Form 10 information is equivalent to information that a company would be required to file if it were registering a class of securities on Form 10, Form 10–SB, or Form 20–F under the Exchange Act,[131] and such information is ordinarily filed on Form 8–K.[132]

Under the proposed amendments, an affiliate security holder selling control securities would have to wait at least 90 days before being permitted to resell the securities, and a security holder selling restricted securities would be required to wait the duration of the holding period before being permitted to resell the securities.[133] The 90-day delay or

144(e)(3)), Interpretation No. 216.01. See also *Standard Chartered Bank* (June 22, 1987).

[120] 17 CFR 230.419. The term ''penny stock'' is defined in 17 CFR 240.3a51–1.

[121] See Release No. 33–6932 (Apr. 28, 1992) [57 FR 18037].

[122] 17 CFR 230.419.

[123] See 17 CFR 230.405 and Release No. 33–8587 (Jul. 15, 2005) [70 FR 42234].

[124] *Ken Worm, NASD Regulation, Inc.* (Jan. 21, 2000). In that letter, the Division stated that ''transactions in blank check company securities by their promoters or affiliates * * * are not the kind of ordinary trading transactions between individual investors of securities already issued that Section 4(1) [of the Securities Act] was designed to exempt.'' The Division stated its view that ''both before and after the business combination or transaction with an operating entity or other person, the promoters or affiliates of blank check companies, as well as their transferees, are 'underwriters' of the securities issued. * * * Rule 144 would not be available for resale transactions in this situation, regardless of technical compliance with that rule, because these resale transactions appear to be designed to distribute or redistribute securities to the public without compliance with the registration requirements of the Securities Act.''

[125] See proposed Rule 144(i).

[126] See proposed paragraph (i)(1) of Rule 144.

[127] ''Business combination related shell company'' is defined in Securities Act Rule 405.

[128] We are not proposing a comparable provision for security holders of non-reporting companies that have ceased to be shell companies because they have business operations or more than nominal non-cash assets. We have not proposed a comparable provision for these companies, because we preliminarily believe that the information that a non-reporting company would provide to the market does not adequately protect against potential abuse in those situations.

[129] 17 CFR 239.16b.

[130] See Release No. 33–8587. These provisions are consistent with the Form S–8 provisions for shell companies, except that Form S–8 requires a former shell company to wait 60 days, rather than 90 days, before it is able to use the form to register securities.

[131] 17 CFR 249.210; 17 CFR 249.210b; and 17 CFR 249.220f.

[132] 17 CFR 249.308. Items 2.01(f) and 5.01(a)(8) of Form 8–K require a company in a transaction where the company ceases being a shell company to file a current report on Form 8–K containing the information (or identifying the previous filing in which the information is included) that would be required in a registration statement on Form 10 or Form 10–SB to register a class of securities under Section 12 of the Exchange Act.

[133] For the purposes of computing the holding period under the proposed rule, the securities shall be deemed to have been acquired either at the time the securities were acquired from the issuer or affiliate of the issuer, or at the time the ''Form 10 information'' is filed with the Commission,

the duration of the holding period would provide the market with time to absorb the Form 10 information filed with the Commission regarding the company, and the 90-day delay here is consistent with the 90-day waiting period in Rule 144(c) and proposed Rule 144(d).

7. Representations Required From Security Holders Relying on Exchange Act Rule 10b5–1(c)

Rule 10b5–1 [134] under the Exchange Act defines when a purchase or sale constitutes trading ''on the basis of'' material nonpublic information in insider trading cases brought under Exchange Act Section 10(b) [135] and Rule 10b–5.[136] Specifically, a purchase or sale of a security of an issuer is ''on the basis of'' material nonpublic information about that security or issuer if the person making the purchase or sale was aware of the material nonpublic information when the person made the purchase or sale. However, Rule 10b5–1(c) provides an affirmative defense that a person's purchase or sale was not ''on the basis of'' material nonpublic information. For this defense to be available, the person must demonstrate that:

- before becoming aware of the material nonpublic information, he or she had entered into a binding contract to purchase or sell the securities, provided instructions to another person to execute the trade for the instructing person's account, or adopted a written plan for trading the securities;
- the contract, instructions or written trading plan satisfy the conditions of Rule 10b5–1(c); and
- the purchase or sale that occurred was pursuant to the contract instruction or plan.

Currently, Form 144 requires a selling security holder 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.'' The Division of Corporation Finance has indicated that a selling security holder who satisfies Rule 10b5–1(c) may modify the Form 144 representation to indicate that he or she had no knowledge of material adverse information about the issuer as of the date on which the holder adopted the written trading plan or gave the trading instructions, specifying that date and indicating that the representation speaks as of that date.[137]

In order to reconcile the Form 144 representation with Rule 10b5–1, we are proposing to codify this interpretive position. Under the proposed amendments, Form 144 filers would be able to make the required representation as of the date that they adopted written trading plans or gave trading instructions that satisfy Rule 10b5–1(c).

Request for Comments

- Should we codify all of the above staff positions? Is the codification of the staff position on securities acquired under Section 4(6) appropriate and consistent with the purposes of Rule 144? Would codification of the staff positions on the Rule 144 holding period help to resolve any confusion regarding how to calculate the holding period? Would codification of the position on the aggregation of pledgees securities assist security holders in determining their volume limitations? If you believe we should not codify any of these positions, which one or ones should we not codify? If so, why?
- Should we revise any of the staff's existing positions on these matters? If so, which position and why? Does the wording of any of the proposed language suggest a change, or create ambiguity, in the staff's position?
- Would codification of the staff position on the treatment of securities issued by blank check companies protect against abuse relating to the resale of such securities? Should we expand the staff position to preclude reporting and non-reporting shell companies from relying on Rule 144?
- Should we permit reliance on Rule 144 for the resale of securities of former shell companies if the company is a reporting company, the company is no longer a shell company, the company has filed Form 10 information reflecting its status as an entity that is not a shell company, and either 90 days have elapsed since the filing of the Form 10 information or the holding period has been met? Is 90 days an appropriate amount of time? Should the delay be longer (*e.g.*, 180 days or one year)? Are there any reasons not to adopt such an amendment? Should we expand the proposed revision to permit reliance on Rule 144 also for the resale of securities of non-reporting companies that were formerly non-reporting shell companies where there is publicly available information (provided under Rule 15c2–11) [138] reflecting that such companies have obtained business operations or more than nominal assets?

F. Amendments to Rule 145

Securities Act Rule 145 provides that exchanges of securities in connection with reclassifications of securities, mergers or consolidations or transfers of assets that are subject to shareholder vote constitute sales of those securities. Rule 145(c) deems persons who were parties to such a transaction, other than the issuer, or affiliates of such parties to be underwriters. Rule 145(d) sets forth the restrictions on the resale of securities received in such transactions by persons deemed underwriters. In the 1997 proposal, we proposed to eliminate the presumed underwriter and resale provisions in Rule 145(c) and (d). Many commenters supported the 1997 proposal.[139]

After reviewing comments on the proposal, we believe it is appropriate to eliminate the presumptive underwriter provision in Rule 145, as it is no longer necessary in most circumstances. However, based on our experience with business combinations involving shell companies that have resulted in abusive sales of securities, we believe that there continues to be a need to apply the presumptive underwriter provision to shell companies and their affiliates and promoters. Accordingly, we propose amendments to Rule 145(c) and (d) that would: [140]

- Eliminate the presumed underwriter status provision in Rule 145(c) except with regard to Rule 145(a) transactions that involve a shell company (other than a business related shell company); [141] and
- Harmonize the requirements in Rule 145(d) with the proposed

whichever is the latest date. See proposed Rule 144(d)(3)(xii).

[134] 17 CFR 240.10b5–1.

[135] 15 U.S.C. 78j(b).

[136] 17 CFR 240.10b–5. As stated in Rule 10b5–1(a), the ''manipulative and deceptive devices'' prohibited by Section 10(b) and Rule 10b–5 include, among other things, the purchase or sale of a security of any issuer, on the basis of material nonpublic information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material nonpublic information.

[137] See the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations, Fourth Supplement (May 30, 2001), at Rule 10b5–1; Form 144, Interpretation No. 2.

[138] 17 CFR 240.15c2–11.

[139] See letters from ABA; ASCS; AT&T; BG&E; Brobeck, Phleger & Harrison, LLP (Brobeck); Corporate Counsel; Intel; NY Bar; NY City Bar; SIA; Smith Barney; Sullivan & Cromwell; and Testa Hurwitz.

[140] We also propose to add the definition of ''affiliate'' to paragraph (e) and transfer the definition of ''party'' from paragraph (c) to paragraph (e).

[141] See proposed Rule 145(c). The terms, ''shell company'' and ''business combination related shell company,'' are defined in Securities Act Rule 405. See also Release No. 33–8587 (Jul. 15, 2005) [70 FR 42233].

provisions in Rule 144 that would apply to securities of shell companies.[142]

Under the proposed rule, parties to the transaction in Rule 145(a), other than the issuer, and their affiliates, where a party to the transaction is a shell company, other than a business combination related shell company, could resell securities acquired in connection with the transaction only in accordance with Rule 145(d).

Under proposed Rule 145(d), the persons and parties that are deemed presumed underwriters would be permitted to resell their securities to the same extent that affiliates of a shell company would be permitted to resell their securities under Rule 144, as proposed. The securities could be only sold after any company that was a shell company and a party to the transaction has ceased to be a shell company and at least 90 days have elapsed since the securities were acquired in the transaction, subject to Rule 144 conditions.[143] The 90-day delay is consistent with the 90-day delay that we are proposing in paragraph (i) of Rule 144 relating to the use of Rule 144 for the resale of securities of a former shell company. As in the proposed amendments to Rule 144, after six months have elapsed since the securities were acquired in the transaction, the persons and parties would be permitted to resell their securities, subject only to the current public information condition in Rule 144, provided that the sellers are not affiliates of the issuer at the time of sale and have not been affiliates during the three months before the sale. As in the proposed amendments to Rule 144, one year after the securities were acquired in the transaction the persons and parties would be permitted to freely resell their securities, provided that they are non-affiliates at the time of sale and have not been affiliates during the three months before the sale.

In addition, similar to the proposal for the Preliminary Note in Rule 144, we propose to add a note that Rule 145(c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.[144] We also propose to clarify language in Rule 145(d) regarding the securities that were acquired in a transaction specified in paragraph Rule 145(a).[145]

Request for Comment

- Should we limit the Rule 145 presumptive underwriter provision only to transactions involving shell companies? Are there any other transactions for which the presumptive underwriter provision should continue to apply? Should we eliminate this provision with respect to transactions involving shell companies?
- Are the proposed amendments to Rule 145(d) appropriate? Should we retain the requirement that the issuer of the securities must meet the current public information requirements of Rule 144(c) for a prescribed period of time before the party is permitted to resell freely its securities in the issuer?
- Are the time periods that the parties and their affiliates must wait before being permitted to resell the securities in proposed Rule 145(d) appropriate? Is it appropriate to require those deemed underwriters to wait at least 90 days before being permitted to resell their securities? Should the requirement be shorter or longer (*e.g.*, 30, 60, 120, or 180 days, or one year)? If so, why?
- Should we add the note that Rule 145(c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act?

G. Conforming and Other Amendments

1. Underlying Securities in Asset-Backed Securities Transactions

The proposals we make today necessitate consideration of proposed changes to other rules that refer to Rule 144. In particular, we are proposing changes to the asset-backed rules. We adopted Securities Act Rule 190 to clarify when registration of the sale of underlying securities in asset-backed securities transactions is required.[146] One of the basic premises underlying ABS offerings is that an investor is buying participation in the underlying assets. Therefore, if the assets being securitized are themselves securities under the Securities Act (commonly referred to as a ''resecuritization''), the offering of the underlying securities must itself be registered or exempt from registration under the Securities Act. Rule 190 provides the framework for determining if registration of the sale of these underlying assets is required at the time of the registered ABS offering.

One of the requirements of Rule 190 is that the depositor would be free to publicly resell the securities without registration under the Securities Act.[147] This provision currently notes as an example that if the underlying securities are Rule 144 restricted securities, they must meet the condition of 144(k) (*e.g.*, a two-year holding period by non-affiliates). Because of the manner of sale restrictions on asset-backed securities, this example means that in order to meet this condition under Rule 190, at least two years must have elapsed from the date the securities were acquired from the issuer of the underlying securities, or an affiliate, and the date they are pooled and resecuritized pursuant to Rule 190.

Our proposed revisions to Rule 144 with no concurrent revision to Rule 190 would allow privately placed debt or other ABS to be publicly resecuritized in as little as six months after their original issuance without registration of the underlying securities.[148] Given that that Rule 190 addresses the public distribution of privately placed securities via resecuritization transactions, we are proposing revisions to Rule 190 in order to keep the current two-year period for resecuritizations that do not require registration of the underlying securities.[149]

A particular issuance of asset-backed securities often involves one or more publicly offered classes (*e.g.*, classes rated investment grade) as well as one or more privately placed classes (*e.g.*, non-investment grade subordinated classes). In most instances, the subordinated classes act as structural credit enhancement for the publicly offered senior classes by receiving payments after, and therefore absorbing losses before, the senior classes. These unregistered asset-backed securities are typically rated below investment grade or are unrated and as such could not be offered on Form S–3. They typically are not fungible with registered securities from the same offering and are held by very few investors. Further, the trust or issuing entity usually ceases reporting under the Exchange Act with respect to

[142] See proposed Rule 145(d).

[143] The securities acquired by the parties and persons deemed presumed underwriters would be acquired pursuant to an effective registration statement. As in the proposed Rule 144 amendments, this 90-day delay would allow the market extra time to absorb the information in the registration statement before these persons and parties can publicly resell the securities.

[144] See proposed Note to Paragraphs (c) and (d) of Rule 145.

[145] We propose to revise the phrase in Rule 145(d) relating to ''registered securities'' to say instead ''securities acquired in a transaction specified in paragraph (a) that was registered under the Act,'' which we believe is a more accurate description.

[146] 17 CFR 230.190 and Release No. 33–8518 (Dec. 22, 2004) [70 FR 1506].

[147] 17 CFR 230.190(a)(3).

[148] Although the ABS securities we are discussing may be privately placed, the issuing trust will have also registered the sale of other ABS and may have a reporting obligation under Section 15(d) for some time.

[149] This proposed change would not in any way impact the disclosure requirements for resecuritizaitons.

the publicly offered classes after its initial Form 10–K is filed. We understand the privately placed subordinated securities in these transactions are often the types of securities that are pooled and resecuritized into new asset-backed securities.[150]

Due to the particular circumstances of asset-backed securities and the established experience with a two-year period under both the ABS rules and the prior staff positions that were codified by those rules, we are not persuaded at this time that we should shorten the current two-year holding period for restricted securities that are to be sold into publicly-registered securitizations. As a result, we are proposing to amend Rule 190 to provide that if the underlying securities are Rule 144 restricted securities, Rule 144 must be available for the sale of the securities in the resecuritization, except that at least two years must have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities. Of course, the underlying securities could still be resecuritized if they do not meet this requirement; their sale would just need to be concurrently registered with the offering of the asset-backed securities on a form for which the offering of the class of underlying securities would be eligible. In addition, nothing in Rule 190 as we propose to amend it would lengthen the holding period of the underlying securities for resales other than in connection with publicly registered resecuritizations.

2. Securities Act Rule 701(g)(3)

Securities Act Rule 701(g)(3)[151] outlines the resale limitations for securities issued under Rule 701. The limitations for resales by non-affiliates includes references to paragraphs (e) and (h) of Rule 144, which under the proposed rules, would no longer apply to resales by non-affiliates. Accordingly, it is appropriate to propose a conforming amendment to remove references to Rule 144(e) and (h) from Rule 701.[152]

Request for Comment

- Is the revision to Rule 190 appropriate? Are we correct in understanding that privately placed securities that are resecuritized pursuant to Rule 190 typically were acquired from the issuer two or more years ago? Should we shorten the two-year period for resecuritizations, but to not as short as the six months we propose for certain other resales under Rule 144? What interim length would be appropriate (*e.g.*, one year)?
- Should we limit our revision to just underlying securities that are asset-backed securities and allow non-asset-backed securities such as corporate debt to be securitized without registration in the revised Rule 144 periods?
- Are there other instances where our rules reference Rule 144 or Rule 145 that would warrant change as a result of our proposed revisions to those rules?
- Is the proposed change to Rule 701 appropriate?

III. Coordination of Form 144 Filing Requirements with Form 4 Filing Requirements

Rule 144 requires a seller to transmit a Form 144 for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon Rule 144 or the execution directly with a market maker of such a sale, if the sale has exceeded certain filing thresholds.[153] The proposed amendments above eliminate the Form 144 filing requirement for non-affiliates, and therefore, the Form 144 filing requirements would apply only to affiliates of the issuer.[154]

Many affiliates of an issuer under Rule 144 are also insiders of the issuer under Section 16 of the Exchange Act.[155] Pursuant to Exchange Act Rule 16a–3,[156] insiders are required to report changes in beneficial ownership, including purchases and sales of securities, on Form 4.[157] Some of the items required by Form 144 are duplicative of the requirements on Form 4. The Sarbanes-Oxley Act of 2002[158] changed the Form 4 filing deadline to two business days after the transaction is executed. As a result, affiliates selling securities under Rule 144 often are required to file a Form 4 just a few days after they file a Form 144 to report information regarding the same sale of securities.

In order to reduce duplicative requirements on individuals who are subject to both the Form 144 filing requirements and the Section 16 filing requirements, we solicit comment on how best to coordinate the Form 144 filing requirement with the filing requirements under Section 16 of the Exchange Act for an affiliate who wishes to rely on Rule 144 and is subject to the Section 16 filing requirements.[159] Specifically, we solicit comment on the following:

- Revising the filing deadline for Form 144 to coincide with the filing deadline for Form 4 (before the end of the second business day following the day on which the subject transaction was executed);[160]
- Permitting affiliates subject to Section 16 filing requirements to, at their option, satisfy their Form 144 filing requirements by timely filing a Form 4 to report the sale of their securities; and
- Revising Item 701 of Regulations S–B and S–K[161] to require additional disclosure about the resale status of securities issued in unregistered transactions at the time the company first issues the securities.

While Form 144 and Form 4 both provide information regarding the title of the class of securities sold, the number of shares subject to sale, the aggregate market value of those shares, and the date of sale, there are, however, some differences in the disclosure required by Form 144 and Form 4 with respect to sales of securities. For example, Form 4 does not request some information that is required to be provided in Form 144, including:

- The date that the securities were acquired;
- The nature of the acquisition transaction;
- The name of the person from whom the securities were acquired;
- The amount of securities acquired;
- The date of payment for the securities; and
- The nature of payment.

In addition, while Form 144 requires disclosure regarding securities sold in the three months prior to the sale, if a person has not been subject to the Section 16 reporting obligations for three months, that person's Section 16

[150] See Saskia Scholtes, *Left in the Dark on Debt Obligations,* FT.com (Mar. 27, 2007) (describing privately placed collateralized debt obligations (CDOs) vehicles used to repackage portfolios of other debt and noting that ''the biggest category of deals, at 44%, consisted of CDOs backed by asset-backed securities such as those backed by subprime mortgages'').

[151] 17 CFR 230.701(g)(3).

[152] See proposed Rule 701(g)(3).

[153] See Rule 144(h). As noted above, we are proposing to raise the thresholds that trigger the Form 144 filing requirement.

[154] See Section II.B above.

[155] Section 16 requirements apply to every person who is directly or indirectly the beneficial owner of more than 10% of any class of any equity security (other than an exempted security) which is registered pursuant to Section 12, or who is a director or an officer of the issuer.

[156] 17 CFR 240.16a–3.

[157] 17 CFR 249.104 and 17 CFR 274.203.

[158] Pub. L. No. 107–204, 116 Stat. 745.

[159] See also letter from Corporate Counsel.

[160] See Exchange Act Rule 16a–3(g).

[161] 17 CFR 228.701 and 229.701. We recently proposed to integrate Regulation S–B disclosure requirements into Regulation S–K disclosure requirements. See SEC Press Release No. 2007–102 (May 23, 2007), available at *http://www.sec.gov/news/press.shtml.*

reports would not provide complete information regarding sales of securities in the last three months. Also, Form 4 does not contain the proposed representation that is given by security holders that they do not know material adverse information about the company as of the date that they adopted a plan under Exchange Act Rule 10b5–1 or gave trading instructions, as applicable.[162]

We preliminarily believe that if we permit a security holder to satisfy a Form 144 filing requirement by filing a Form 4, Form 4 should be amended to require the security holder that wishes to satisfy a Form 144 filing requirement to provide the following information regarding Rule 144 compliance in Form 4:

- The date that the securities were acquired (for purposes of the holding period calculation under Rule 144(d)); [163]
- The name of the person from whom the securities were acquired;
- The date of payment for the securities; and
- The nature of the payment.

Regarding the items in Form 144 relating to the nature of the acquisition transaction and the amount of securities acquired, we believe that such information or similar information could be available in a previously filed Form 4 reporting the purchase of the securities, unless the security holder was not subject to Section 16 requirements at the time the securities were acquired. We solicit comment on which Form 144 disclosure items we should preserve and transfer from Form 144 to Form 4, if we were to permit security holders to satisfy their Form 144 obligations with a Form 4.

We also solicit comment on whether Form 4 should be expanded to include these additional disclosure items. We have concerns, however, that simply combining the required disclosures on the two forms into Form 4 may be confusing to filing persons as well as other market participants. For example, because some of the information required on Form 144 is not relevant to all persons filing Form 4, a person filing a Form 4 who is not required to file a Form 144 should not be required to provide that information. Similarly, the two forms also can report different events. Form 4 reports both purchases and sales, while Form 144 reports only sales. In short, much of the information in each form may not be relevant to filers of the other form and may cause confusion among filers of the forms and investors.

Because Form 4 is an electronic filing on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (EDGAR), one alternative may be to implement programming changes to EDGAR to modify the user interface for Form 4 in such a way as to provide access to the portion of that form that would request Rule 144 information only if the filer affirmatively asserts that he or she wishes to satisfy his or her Rule 144 notice obligations on Form 4. Programming changes also could be made to enable a filer to enter all relevant information on one user interface which would automatically create two separate filings, one on Form 4 and the other on Form 144. To the extent possible, we seek to reduce filing requirements without losing important disclosure or causing confusion to filers and users of Form 4 and Form 144.

Such coordination also would require a revision to the statement in Rule 144(g) that the broker would deemed to be aware of any facts or statements contained in the notice required by Rule 144(h).[164] If a security holder has filed a Form 4 to satisfy his or her Form 144 filing requirement, we preliminarily believe that a broker should also be deemed to be aware of any facts contained in a Form 4 that are relevant to Rule 144, if this is the approach we adopt in the end. We request comment on this point and how to best address this issue.

Because some information on Form 144 would no longer be provided if we were to adopt these amendments, we believe that additional disclosure in registration statements or periodic reports filed by the issuer of the securities may help to inform the market about the number of restricted securities available for resale. We solicit comment on a possible amendment to Item 701 of Regulations S–K and S–B that would require disclosure regarding: (1) Whether the securities issued in unregistered transactions were restricted securities, as defined in Rule 144(a)(3); (2) if the securities were not restricted securities, the resale status of such securities under Rule 144; and (3) if the securities were restricted securities, the first date when such securities could be deemed to meet the holding period requirement in Rule 144(d).

Request for Comment

- Should we permit persons who are subject to Section 16 reporting obligations to provide the disclosure required by Form 144 on Form 4 instead? Is there any particular information currently disclosed on Form 144 that would otherwise not be disclosed on Form 4 which industry participants or security holders want or find material? If so, what is that information?
- Could relevant information be reported elsewhere? Should we revise Item 701 of Regulations S–K and S–B to require added disclosure in a company's registration statement or periodic reports about the resale status of securities issued in unregistered transactions at the time when the company first sells the securities? What other types of disclosure regarding restricted securities (other than the resale status of the securities) would be useful to the market? Would disclosure regarding the securities at the time they were first issued be beneficial, or would such disclosure be premature and speculative?
- If we permit persons subject to Section 16 reporting obligations to file a Form 4 in lieu of a Form 144, is it appropriate to delay the filing deadline of Form 144 to two business days after the transaction is completed? [165] Is there a benefit to having this information at an earlier time, rather than two business days after the transaction is completed? How do market participants use the information in Form 144 today?
- If we expand Form 4 by adding requirements from Form 144, would Form 144 information contained in Form 4 be more difficult to find? Should we provide a means to allow persons searching on EDGAR to determine whether a Form 4 is being used to disclose Form 144 information (*e.g.*, a checkbox on Form 4)?
- Should we mandate that Form 144 be filed electronically on EDGAR when the form relates to the securities of a reporting company?
- Should we expand Form 4 to add disclosure requirements from Form 144 for these purposes? If so, which disclosures from Form 144 should we retain? Should we modify Form 4 to incorporate them or should this

[162] See Section II.E.7 of this release.

[163] We believe that this item should be added to Form 4, because if the security holder was deemed to have acquired the securities on an earlier date under the tacking provisions in Rule 144(d), the date that the security holder acquired the securities for Rule 144 purposes could differ from the date that would have been previously reported on the Form 4 covering the acquisition transaction.

[164] Existing Note (i) of Rule 144(g)(3) also states that the broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h).

[165] Such an amendment would also necessitate revising the rule to modify or delete the requirement in proposed Rule 144(h) that the security holder filing the notice shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

information be provided as a supplement to Form 4? For example, should Form 144 information be in a new separate table? Would a combined Form 4/Form 144 be confusing to investors, other persons using the forms, or persons submitting the forms?

• Should we require only persons that seek to satisfy both their Rule 144 and Form 4 requirements with one form to fill out all of the questions on a combined Form 4/Form 144? If so, what mechanisms can we use to prevent confusion and assist filers in providing only the information that they are required to provide? For example, should we implement programming changes to EDGAR that would electronically filter out any filers not seeking to report information pursuant to Rule 144 on their Form 4 by withholding questions relevant to Rule 144 unless the filer indicates that he or she intends to provide such information on Form 4?

• Would combining the forms and delaying the Rule 144 filing date make it more difficult for brokers to perform the inquiries required in order to qualify the transaction as a ''brokers' transaction''? Do brokers and transfer agents need to see Form 144 information prior to executing the transaction? Is there a better way for these parties to obtain this information prior to executing the transaction other than a separate filing? Should brokers be deemed to be aware of facts contained in Form 4 to the extent that the form is filed for Rule 144 purposes?

• Should we implement programming changes to EDGAR that would enable security holders to create two separate filings, one Form 4 and one Form 144, at the same time by completing only one submission to EDGAR? Would this lessen the probability of confusion that would result if items on Form 144 were transferred to Form 4?

IV. General Request for Comments

We request and encourage any interested person to submit comments regarding:

• The proposed rule changes that are the subject of this release;

• Additional or different changes; or

• Other matters that may have an effect on the proposals contained in this release.

We request comment from the point of view of registrants, investors and other users of information about the resale of restricted securities and securities owned by affiliates of the issuer.

V. Paperwork Reduction Act

A. Background

Our proposals contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''). [166] We are submitting the proposed revisions to Form 144 to the Office of Management and Budget (OMB) for review in accordance with the PRA.[167] The title for the information collection is ''Notice of Proposed Sale of Securities Pursuant to Rule 144 under the Securities Act of 1933'' (OMB Control No. 3235–0101). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid control number.

B. Summary of Proposed Amendments

The proposed amendments would eliminate the need for non-affiliates of the issuer to file Form 144. In addition, the proposal would raise the filing threshold for Form 144 to 1,000 shares or $50,000 worth of securities during a three-month period. Currently, the Form 144 filing threshold is 500 shares and $10,000. Form 144 may be filed in paper or electronically using the EDGAR filing system. The proposed amendments also include two limited changes to Form 144.[168] The primary purpose of this collection of information is the disclosure of a proposed sale of securities by security holders deemed not to be engaged in the distribution of the securities. The filings are publicly available. Persons reselling securities in reliance on Rule 144 are the respondents to the information required by Form 144. The information collection requirements imposed by Form 144 are mandatory.

Currently, an estimated 60,500 notices on Form 144 are filed annually for a total burden of 121,000 hours.[169] If adopted, the amendments would eliminate the need for non-affiliates to ever file a Form 144. We currently estimate that approximately 45%, or 27,127, of the total 60,500 filings are filed by non-affiliates.[170] Under the proposals, these filings would no longer be required. In addition, we estimate that increasing the Form 144 filing thresholds from 500 shares or $10,000 to 1,000 shares or $50,000 would reduce the number of filings by affiliates by approximately 5%, or 3,025 filings.[171] We estimate that each notice on Form 144 imposes a burden for purposes of the Paperwork Reduction Act of two hours.[172] Therefore, we estimate that the proposals would reduce the burden on selling security holders by approximately 60,300 burden hours.[173]

C. Solicitation of Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (2) evaluate the accuracy of our estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (4) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303, with reference to File No. S7–11–07. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–11–07, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

[166] 44 U.S.C. 3501 *et seq.*

[167] See 44 U.S.C. 3507 and 5 CFR 1320.11.

[168] We propose to amend Form 144 to include information regarding security holders' hedging activities and to allow security holders to represent that they do not know of material adverse information about the company as of the date they adopt a plan under Exchange Act Rule 10b5–1.

[169] This reflects current OMB estimates.

[170] The Office of Economic Analysis obtained data from the Thomson Financial Wharton Research Database. The estimate is based on information contained in notices on Form 144 filed in 2005.

[171] This estimate is based on information contained in notices on Form 144 filed in 2005.

[172] This is the same as the current OMB estimate.

[173] (27,127 filings + 3,025 filings) * 2 hours/filing = 60,304 hours.

VI. Cost-Benefit Analysis

A. Background

Rule 144 under the Securities Act of 1933 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. Specifically, a selling shareholder is deemed not an underwriter under Section 2(a)(11), and therefore may take advantage of the Section 4(1) exemption and need not register its sale of securities, if the sale complies with the provisions of the rule. Rule 145 requires Securities Act registration of certain types of business combination transactions. Rule 145 contains a safe harbor provision similar to Rule 144 for presumed underwriters who receive securities in such a business combination transaction. Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds 500 shares or other units or the aggregate sales price exceeds $10,000. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons not deemed to be engaged in the distribution of the securities.

B. Description of Proposal

We are proposing amendments to Rule 144, Rule 145, and Form 144 that would accomplish the following:

- Simplify the Preliminary Note to Rule 144 and text of Rule 144, using plain English principles;
- Reduce the Rule 144(d) holding period for restricted securities of reporting companies to six months for both affiliates and non-affiliates;
- Significantly reduce requirements applicable to non-affiliates of reporting and non-reporting companies so that:
  - Non-affiliates of reporting companies would be subject only to the current public information requirement after meeting the six-month (or more depending on hedging activities) holding period and up until one year since the date they acquired their securities; and
  - Non-affiliates of non-reporting companies would be able to resell freely after the one-year holding period;
- Require that security holders toll the holding period during the time they enter into certain hedging transactions, but in no event would the holding period extend beyond one year;
- Eliminate the ''manner of sale'' limitations with respect to debt securities;
- Increase the thresholds that would trigger a Form 144 filing requirement;
- Codify the staff's positions, as they relate to Rule 144, concerning the following issues:
  - Inclusion of securities acquired in a transaction under Section 4(6) of the Securities Act in the definition of ''restricted securities,''
  - The effect that creation of a holding company structure has on a security holder's holding period,
  - Holding periods for conversions and exchanges of securities,
  - Holding periods for cashless exercise of options and warrants,
  - Aggregation of a pledgee's resales with resales by other pledgees of the same security for the purpose of determining the amount of securities sold,
  - The extent to which securities issued by reporting and non-reporting shell companies are eligible for resale under Rule 144, and
  - Representations required from security holders relying on Rule 10b5–1(c); and
- Eliminate the presumptive underwriter status in Securities Act Rule 145, except for transactions involving a shell company, and harmonize the resale requirements in that rule with the proposed resale requirements for securities of shell companies in Rule 144.

We also solicit comment on how best to coordinate the Form 144 filing deadline with the Form 4 filing deadline and permit persons who are subject to Section 16 to meet their Form 144 filing requirement by filing a Form 4.

C. Benefits

If adopted, the proposed amendments should reduce the cost of complying with Rules 144 and 145. We have examined the Forms 144 that have been filed with the Commission since 1997.[174] In 2006, the volume of transactions filed under Rule 144 exceeded $71 billion, and more than 50% of U.S. public companies, large and small alike, have reported every year at least one transaction on Form 144. Reducing the burden associated with these transactions can reduce the cost of capital to these companies.

One item on Form 144 requires security holders to provide information on the nature of the acquisition transaction. Some Form 144 filers acquire their securities from the company as a private investment, while others receive the securities as part of their employee awards, or as a form of payment for services to the company. Reducing the burden associated with selling these securities not only can reduce the cost of raising capital, but also may increase the value of these securities in non-cash transactions and reduce the cost of services and employment.

For the most part, transactions that were filed on Form 144 have been small. In 2006, about 90% of the transactions had a market value of less than $2 million and 99% of these transactions had a market value of less than $20 million. More than half of the investors report total annual transactions of a market value of less than $240,000 with any specific company. Thus, reducing the costs associated with filing Form 144 and raising the thresholds that trigger a Form 144 filing requirement are likely to affect many small investors.

We expect that the increase in the value of these securities would come from several sources under the proposed rule. The first is the increase in the liquidity of the securities. Investors, suppliers, or employees who are restricted from selling securities and who cannot hedge their positions are generally exposed to more risk than those who are not subject to such limitations, and generally require higher compensation (or a larger discount) for this risk.[175] We should also expect that the longer the non-trading period, the higher the premium that investors charge for their lack of liquidity.[176]

[174] These filings were obtained through Thomson Financial's Wharton Research Database which includes Forms 144 filed from 1996 through 2007.

[175] There is also evidence that the non-trading period is associated with the premium that investors charge for lack of liquidity. See, for example, Silber, W.L., *Discounts on restricted stock: The impact of illiquidity on stock prices*, Financial Analysts Journal, 47, 60–64 (1991). Several studies have attempted to separate the discount associated with the non-transferability of the shares from other factors that affect the discount. See, for example, Wruck, K.H., *Equity Ownership Concentration and Firm Value, Evidence from Private Equity Financings,* Journal of Financial Economics, 23, 3–28 (1989); Hertzel, M., and R.L. Smith, *Market Discounts and Shareholder Gains for Placing Equity Privately,* Journal of Finance, 459–485 (1993); Bajaj, M., Denis, D., Ferris, S.P., and A. Sarin, *Firm Value and Marketability Discounts,* Journal of Corporate Law, 27, 89–115 (2001); Finnerty, J.D., *The Impact of Transfer Restrictions on Stock Prices* (Fordham U. Working Paper, 2002). The average discounts attributed to lack of transferability across these studies is estimated between 7% and 20%. Other factors that could affect the discount are the amount of resources that private investors need to expend to assess the quality of the issuing firm or to monitor the firm, the ability of the investors to diversify the risk associated with the investment, whether the investors are cash constrained, the financial situation of the firm, etc.

[176] We are not aware of any empirical work that examines the effect of shortening the holding period in Rule 144 on the discount. Longstaff (1995) calculates an upper bound for percentage discounts for lack of marketability. According to his model, drops in a restriction from two years to one year and from one year to 180 days are associated each with a 30% drop in the discount. Longstaff, F.A., *How Much Can Marketability Affect Security Values?* Journal of Finance, 50, 1767–1774 (1995).

Thus, reducing the time limit for selling these securities in the market is likely to reduce the discount that investors will charge for these securities, or the amount of securities that the company will need to provide for services. The actual reduction in this cost of capital will depend on the extent to which the six-month limit has a binding impact on security holders' decisions to resell their securities, and the extent to which investors, employees, or service providers can protect themselves against such exposure.

Also, resale transactional costs for non-affiliate selling security holders should decrease as a result of the removal of all conditions other than the holding period and the current public information condition applicable to non-affiliates. Reducing restrictions on resales by non-affiliates would streamline the rule and reduce the complexity of the rule. This and other simplifications of the rule and Preliminary Note to Rule 144 should make it easier to understand and follow, reducing the time that investors must spend analyzing whether or not they can rely on the rule as a safe harbor from the requirement to register the resale of their securities. However, because we are proposing to shorten the holding period only with respect to securities of reporting companies, the proposals would add some additional complexity that would diminish the effect of simplifying the other aspects of the rule.

If the proposals are adopted, non-affiliates would no longer have to file a Form 144. Therefore, they would save the cost of preparing and filing this form, as well as the transactional costs related to Rule 144's manner of sale requirements and volume of sale limitations. The increase in the Form 144 filing thresholds should further reduce the number of transactions for which a Form 144 needs to be filed for affiliates of the issuer. This would eliminate the cost of filing the form for transactions that fall below the thresholds.

The elimination of the manner of sale limitations would reduce costs for debt security holders. It is difficult to estimate the amount of reduction. Among the Forms 144 filed in 2005, we found at least 200 filings covering a sale of debt securities, although we believe the actual number of debt securities resales relying on Rule 144 may be higher than this.[177] The elimination of the manner of sale limitation may also reduce brokers' fees, and therefore result in a reduction of revenue for brokers.

The codification of existing staff positions should create no added cost to companies or investors because, substantively, there is no expected change in practice. However, these codifications should provide substantial benefit to the investing community by clarifying and better publicizing the staff's positions. Greater clarity and transparency of our rules should reduce security holders' transactional costs by eliminating uncertainty and reducing the need for legal analysis.

The proposed amendments to Rule 145 remove what we preliminarily believe are unnecessary restraints on the resale of securities by parties or their affiliates to a merger, recapitalization, or other transaction listed in Rule 145(a). The proposed amendments to Rule 145 would reduce costs incurred by companies, parties to the transaction, and their affiliates to comply with the resale and other restrictions of the rule. Retaining the presumptive underwriter provision for transactions involving shell companies is intended to afford investors with additional protection against manipulative practices or abusive sales by parties to the transaction and their affiliates after the completion of the Rule 145 transaction.

The primary benefit of permitting an affiliate to satisfy a Form 144 filing requirement by timely filing a Form 4 reporting the sale of securities would be to reduce duplicative paperwork costs incurred by these individuals. We solicit comment on a number of alternatives to address this point, including which items on Form 144 could be transferred to Form 4 in order to ascertain which items on Form 144 are more important to the market and should therefore be preserved. While the market would receive the information later if the Form 144 filing deadline were to be revised to coincide with the Form 4 filing deadline, the information that would have been contained on Form 144 may be more easily accessible to users of the information, if transferred to Form 4, which is filed electronically.

D. Costs

The proposal to reintroduce a provision that tolls the holding period if the shareholder had entered into a transaction that hedges the economic risk of ownership of the securities may increase the cost of a private offering. The proposal provides that regardless of the presence of such hedging, the holding period would not extend beyond one year, which is the current holding period before security holders may begin to sell their restricted securities. After one year, affiliates would be able to trade subject to the conditions to which they are subject under the current rules. However, the tolling provision may add a layer of complexity to calculating whether the holding period requirement has been met between the six-month and one-year marks because subsequent purchasers must determine whether previous owners of the securities have entered into such hedging transactions. We seek to minimize the burden on security holders of making this determination by providing, under the proposed rules, that the holding period need not be suspended if the security holder reasonably believes that the previous owner has not engaged in hedging transactions. We also believe that the ceiling on the proposed tolling provision minimizes burdens. For example, a security holder who wishes to rely on proposed Rule 144 but is unable to determine the previous owner's hedging activities would be able to omit the period in which the previous owner held the securities in the calculation of the holding period or be subject to a maximum one-year holding period, as under the current rule, and a non-affiliate security holder would be permitted to resell the securities after one-year, regardless of any hedging activities in connection with the securities. Also, as provided under the proposed revision to Note (ii) of Rule 144(g)(3), brokers would also be required to inquire into security holders' hedging transaction which may increase some costs for them, although we preliminarily believe such costs would not be significant.

Under the proposed amendments, after one year, non-affiliates would be permitted to sell their restricted securities freely without being subject to any other condition. One concern is whether, in cases of the securities of a non-reporting company, relieving non-affiliates from compliance with Rule 144's existing conditions, including the current public information condition requiring that there be adequate available current information with respect to the issuer of the securities, would lead to abuse.

Reducing the requirements under Rule 144 might also cause a substitution effect, where companies might choose to rely more on private transactions than on public transactions to raise capital. There is also the risk that the market would not be informed about the nature of these transactions, given that these transactions would not need to be registered and given the changes to the

[177] We base the estimate on number of filings that indicated that the securities were debt securities in the section of the Form 144 that requests information on the nature of the acquisition transaction.

Form 144 filing requirements. The market may also be less informed, given that restricted securities of reporting companies could be resold by non-affiliates earlier without complying with the condition that current information on the issuer of the securities be publicly available, and restricted securities of non-reporting companies could be resold by non-affiliates without ever complying with the current public information condition. This, in return, could lead to a less efficient price formation. Direct negotiated deals with companies could also lead to informational advantage of some investors. Reducing the requirements could also lead to movement of certain investors from public transactions to private transactions. The effect of the proposed rule on these movements and their effect on investor wealth are thus subject to many factors.

While these are potential costs, we believe that they are justified by the potential benefits of the proposal and may not be significant in the aggregate. First, there is some evidence that, on average, the announcement of resales under Rule 144 by security holders has no adverse effect on stock prices, suggesting that the market does not attribute an information advantage to these security holders at the time of selling.[178] Second, the rule provides several barriers to selling restricted securities by affiliated investors to alleviate these concerns. Third, to the extent that privately negotiated deals give private investors lucrative terms at the expense of public investors, public investors may avoid such companies, and these companies may eventually be worse off. We solicit comment as to whether information regarding the resale status of an issuer's securities should be provided by other means such as pursuant to Item 701 of Regulation S–K or Regulation S–B.

As noted above, the proposed amendments to Rule 145 would reduce costs incurred by companies, parties to the transaction, and their affiliates to comply with the resale and other restrictions of the presumed underwriter provision. The magnitude of such reduction may vary.

E. Request for Comments

We seek comments and empirical data on all aspects of this Cost-Benefit Analysis. Specifically, we ask the following:

- What would be the effect on the liquidity discount for privately issued securities of reducing the holding period for securities of reporting companies to six months? Would this effect significantly increase a company's ability to raise capital in private securities transactions? Would the reduced holding period have an impact, in particular, on the ability of smaller businesses to raise capital?
- Would shortening the holding period to six months for reporting companies increase the frequency of abusive transactions where the security holder has not taken a sufficient economic risk of investment? What if the holding period for non-reporting companies is shortened to six months as well?
- What is the impact of eliminating the conditions to which non-affiliates are currently subject for a period of time prior to free public resale (i.e., the current public information requirement, the volume limitations, the manner of sale limitations, and the notice requirement)? Do any of the current conditions to which non-affiliates are subject provide a measurable benefit to the market? For example, would buyers of restricted securities of non-reporting companies be disadvantaged because sellers relying on Rule 144 are no longer subject to the condition requiring that current information of the issuer be publicly available?
- Who uses the information filed on Form 144? Would the proposed elimination of the requirement to file a Form 144 by non-affiliates and the proposed filing thresholds result in a loss of important information for these individuals?
- What would be the effect of reintroducing the tolling concept to Rule 144? How would it affect a company's ability to raise capital? Would the tolling provision impose undue costs on brokers and security holders due to the additional duties relating to tracking the security holders' or previous owners' hedging transactions? Would the tolling provision impose costs on transfer agents?
- What would be the impact of the proposed elimination of the limitations on the manner of sale for debt securities? How much would debt security holders save in fees that they would no longer incur under the proposed amendments? What impact would the elimination have on brokers? Would this proposal increase the burden on transfer agents?
- What are the benefits and costs of codifying the staff's existing interpretations under Rule 144?
- What is the effect of the elimination of the presumptive underwriter provision in Rule 145 for all transactions except those involving a shell company?

VII. Consideration of Burden of Competition and Promotion of Efficiency, Competition and Capital Formation

Securities Act Section 2(b)[179] requires us when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The proposed amendments are intended to reduce regulatory requirements for the resale of securities and simplify the process of reselling such securities. Currently, a shareholder owning restricted securities must wait until at least one year after the securities are last sold by the issuer or an affiliate before that shareholder can rely on Rule 144 safe harbor to resell those securities. The amendments would reduce this holding period to as little as six months for restricted securities of Exchange Act reporting companies if the security holder did not engage in hedging transactions with respect to the securities. The holding period would extend past six months to the extent the security holder engaged in hedging transactions, but in no event would the holding period extend beyond one year. Restricted securities of non-reporting companies would continue to be subject to a one-year holding period. A shorter holding period for restricted securities of reporting companies may increase the liquidity of securities sold in private transactions. This could result in increased efficiency in securities offerings because companies will be able to sell securities in private offerings at prices closer to prices that they may obtain in public markets, without the need to register those securities, and otherwise obtain better terms in private offerings. We also believe that this would promote capital formation, particularly for smaller companies, because the proposals would increase the liquidity of securities sold in private transactions. The amendments should increase a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets.

We do not believe that the proposed tolling provision that suspends the holding period while a security holder

[178] Osborne, Alfred E., *Rule 144 Volume Limitations and the Sale of Restricted Securities in the Over-The-Counter Market,* Journal of Finance, 37,505–523 (1982).

[179] 15 U.S.C. 77b(b).

is engaged in hedging transactions places an undue burden on competition. The proposed tolling provision also may decrease efficiency somewhat by discouraging security holders from engaging in hedging with respect to their securities, however this effect should not be significant, as the proposed tolling provision would apply only for up to six months.

The other proposed amendments to Rule 144 generally should increase efficiency and assist in capital formation. We believe that the proposed elimination of most of the Rule 144 conditions applicable to non-affiliates may further increase the liquidity of privately sold securities. We anticipate that the proposed elimination of the manner of sale limitations for debt securities would provide security holders with greater flexibility in the resale of their securities, thereby increasing efficiency. Raising the Form 144 filing thresholds, as proposed, should also improve efficiency by reducing security holders' paperwork burden.

Under the proposed amendment to Rule 145, individuals and small entities owning stock in companies that engage in transactions specified in Rule 145(a) would no longer be subject to the presumptive underwriter provision, except in the case of transactions involving a shell company. These proposed amendments should improve competitiveness of many small entities by permitting them to resell securities without the restrictions imposed by the current rule.

We request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data and other factual support for their views, if possible.

Section 23(a)(2) of the Exchange Act [180] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We do not believe that the proposed coordination of the Form 144 filing requirements with Form 4 filing requirements, if implemented, would cause a burden on competition. We request comment on whether such amendments would have competitively harmful effects, and how we can minimize those effects.

[180] 15 U.S.C. 78w(a)(2).

VIII. Initial Regulatory Flexibility Analysis

We have prepared this Initial Regulatory Flexibility Analysis in accordance with Section 603 of the Regulatory Flexibility Act.[181] This analysis relates to the proposed amendments to Rules 144 and 145 and Form 144 under the Securities Act.

A. Reasons for, and Objectives of, Proposed Action

Rule 144 creates a safe harbor for the sale of securities under the exemption set forth in Section 4(1) of the Securities Act. If a selling security holder satisfies its conditions, that selling security holder may resell his or her securities publicly without registration and without being deemed an underwriter.

Rule 145 governs the offer and sale of certain securities received in connection with reclassifications, mergers, consolidations and asset transfers. It imposes restrictions similar to Rule 144 on a party to such transactions and to persons who are affiliates of that party at the time the transaction is submitted for vote or consent, with regard to securities acquired in that transaction. Rule 145 contains holding period requirements similar to those in Rule 144.

Form 144 is required to be filed by persons intending to sell securities in reliance on Rule 144 if the amount of securities to be sold in any three-month period exceeds 500 shares or other units or the aggregate sales price exceeds $10,000. The primary purpose of the form is to publicly disclose the proposed sale of securities by persons deemed not to be engaged in the distribution of the securities.

We are proposing amendments that would make Rule 144 easier to understand and apply. We propose to streamline both the Preliminary Note to Rule 144 and the rule. In addition to codifying several staff interpretive positions, the proposals would reduce the Rule 144 holding period and substantially reduce requirements for non-affiliates. The proposals would reintroduce a provision tolling the holding period but only up to one year after the acquisition of the securities from the issuer or an affiliate of the issuer, which is the holding period under the current rules.

The reduction of the Rule 144 holding periods for restricted securities of reporting companies for affiliates and non-affiliates should increase the liquidity of privately issued securities, enabling companies to raise private capital more efficiently. An increase in the Form 144 filing threshold would take into account the effects of inflation since the last amendment to that provision in 1972. Although the codification of several staff interpretive positions is not intended to substantively change the rules, they should simplify analyses under Rule 144 by compiling these interpretations in one readily accessible location. The objectives of the proposed amendments are to simplify Rule 144, to reduce its burdens on investors where consistent with investor protection, and to facilitate capital formation.

The release solicits comment on how best to coordinate the Form 144 filing deadline with the Form 4 filing deadline and permit a person who is subject to Section 16 of the Exchange Act to meet a Form 144 filing requirement with a Form 4 filing, to the extent possible. Such amendments could simplify filing requirements for Section 16 persons even further by allowing them to file only one form to meet the requirements of both Rule 144 and Form 4.

[181] 5 U.S.C. 603.

B. Legal Basis

The amendments are proposed pursuant to Sections 2(a)(11), 4(1), 4(4), 7, 10, 19(a) and 28 of the Securities Act, as amended.

C. Small Entities Subject to Rule

The proposed rules would affect both small entities that issue securities and small entities that hold such securities. An issuer, other than an investment company, is considered a ''small business'' for purposes of the Regulatory Flexibility Act if that issuer:

- Has assets of $5 million or less on the last day of its most recent fiscal year, and
- Is engaged or proposing to engage in a small business financing.[182]

An issuer is considered to be engaged in a small business financing if it is conducting or proposes to conduct an offering of securities that does not exceed the dollar limitation prescribed by Section 3(b) [183] of the Securities Act. This dollar amount is currently $5 million. When used with reference to an issuer or person, other than an investment company, Exchange Act Rule 0–10 [184] defines small entity to mean an issuer or person that, on the last day of its most recent fiscal year, had total assets of $5 million or less.

We are aware of approximately 1,100 Exchange Act reporting companies that currently satisfy the definition of ''small

[182] 17 CFR 230.157. See 5 U.S.C. 601(2).

[183] 15 U.S.C. 77c(b).

[184] 17 CFR 240.0–10.

business'' and may be affected by the proposed amendments as issuers.[185] The proposed amendments also may affect companies that are small businesses, but that are not subject to Exchange Act reporting requirements. As noted above, we currently estimate that approximately 60,500 notices on Form 144 are filed annually.[186] The Commission does not collect information about the size of private companies about which a Form 144 is filed, but some of these non-reporting issuers may be ''small.'' The proposed tolling provision and the proposals to eliminate the manner of sale limitations may also affect brokers that qualify as small entities. We estimate that 910 broker-dealers registered with the Commission are small entities for the purposes of the Regulatory Flexibility Act.[187] We ask for comments regarding an estimate of the number of small entities that may be affected if the proposed amendments are adopted.

D. Reporting, Recordkeeping and Other Compliance Requirements

We expect several of the proposed amendments to reduce the number of Form 144 filings made to the SEC by selling security holders. These proposed amendments are:

- Elimination of all Rule 144 requirements, other than the holding period and the current public information requirement for six months, for non-affiliates; and
- Increased share number and dollar amount thresholds for filing Form 144.

As a result of the elimination of all requirements for non-affiliate security holders, other than the holding period and the current public information requirement, non-affiliates no longer would have to file a Form 144, regardless of the amount of securities sold. We estimate that 45% of the Form 144 filings that we currently receive are from non-affiliates. Therefore, this particular amendment should result in a corresponding reduction in Form 144 filings.

The increase in the filing threshold for Form 144 should decrease the number of Form 144 filings filed by affiliates. Based on studies by the Commission's Office of Economic Analysis, we expect the number of Form 144 filings to decrease by approximately 5%, or 3,025 filings, if the thresholds are increased to 1,000 shares or $50,000 in sales price.

Clerical skills are necessary to complete Form 144.

Also, because the proposed amendments would significantly reduce the conditions in Rule 144 to which non-affiliates are subject, non-affiliates would also no longer be required to keep track of compliance with those conditions. Non-affiliates with securities of both reporting companies and non-reporting companies would no longer be required to comply with the manner of sale limitations and volume limitations. Non-affiliates of non-reporting companies would no longer be required to comply with the requirement that there be current information regarding the issuer that is publicly available.

The reintroduction of the tolling provision would require the security holder and brokers to determine whether the security holder or a previous owner had engaged in hedging transactions with respect to the securities, which may require them to maintain some additional documentation. However, the holding period need not be suspended if the security holder reasonably believes that the previous owner had not engaged in hedging transactions in the securities. Also, a determination regarding hedging activities would only need to be made where the issuer of the securities is a reporting company and the securities are sold before a year has passed since the date the securities were acquired from the issuer or affiliate.

The proposal to eliminate the manner of sale limitation for debt securities would also obviate the need for security holders to determine whether such condition has been met in the resale of their debt securities. The amendments to Rule 145 eliminate the need for parties to a Rule 145(a) transaction or their affiliates to determine whether they have met the resale provisions of Rule 145, except when the transaction involves a shell company.

E. Overlapping or Conflicting Federal Rules

No current federal rules duplicate, overlap or conflict with the rules and forms that we are proposing, except that persons subject to the reporting requirements under Section 16 of the Securities Exchange Act of 1934 may need to file reports on Form 4 as well as Form 144 under certain circumstances. However, the class of Form 144 filers is different than that for Form 4 filers because affiliates of companies not subject to the Exchange Act reporting requirements must file Form 144, but not Form 4. Further, persons who may be deemed affiliates under Rule 144 may not necessarily be the same persons who also are subject to Section 16. Also, Form 144 is required to be filed earlier than Form 4 and Form 144 contains some information that is not required to be included on Form 4. As noted above, the release also solicits comment on whether Form 4 and Form 144 filing requirements should be coordinated to delay the Form 144 filing deadline to match the Form 4 filing deadline and so that persons subject to Section 16 could be exempt from filing a Form 144 regarding a particular transaction if they have already filed a Form 4 with respect to that transaction.

F. Significant Alternatives

We considered different compliance standards for small entities that would be affected by the proposed amendments. In the 1997 proposing release, we solicited comment regarding the possibility of different standards for small entities. However, we believe that such differences would be inconsistent with the purposes of the rules. Commenters on this issue in the 1997 proposing release unanimously agreed that different standards would not be feasible and would only add to the complexity and difficulty of applying the rules.

We also considered the other types of alternatives set forth in the Regulatory Flexibility Act to minimize the economic impact of the amendments on small entities. These included the following:

- the clarification, consolidation, or simplification of compliance and reporting requirements for small entities;
- the use of performance rather than design standards; and
- an exemption from some or all of the proposed amendments for small entities.

Because the proposed amendments would benefit all companies and holders of restricted securities, differing compliance timetables or standards for small entities would not be appropriate. In addition, the proposed holding period would likely have a favorable

[185] The estimated number of reporting small entities is based on 2007 data including the Commission's EDGAR database and Thomson Financial's Worldscope database. This represents an update from the number of reporting small entities estimated in prior rulemakings. See, for example, *Executive Compensation and Related Disclosure*, Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] (in which the Commission estimated a total of 2,500 small entities, other than investment companies).

[186] This reflects current OMB estimates.

[187] For purposes of the Regulatory Flexibility Act, a broker or dealer is small entity if it (i) had total capital of less than $500,000 on the date in its prior fiscal year as of which its audited financial statements were prepared or, if not required to file audited financial statements, on the last business day of its prior fiscal year, and (ii) is not affiliated with any person that is not a small entity and is not affiliated with any person that is not a small entity. 17 CFR 240.0–1.

impact on small entities by increasing a company's ability to raise capital in private securities transactions, which may improve the competitiveness of those companies, particularly smaller businesses that do not have ready access to public markets. The amendments which clarify and streamline Rule 144 should benefit all companies, including small entities. We continue to believe that further changes such as the use of performance standards or other exemptions with regard to small entities would overly complicate the rule, which would be contrary to our stated purpose. The proposed hedging provision seeks to ensure that any security holder relying on Rule 144 has taken sufficient economic risk of investment in the securities and the prohibition against security holders of reporting and non-reporting shell companies protect against abuses relating to the resale of privately issued securities.

The proposed changes to Rule 145 would eliminate presumptive underwriter provision and resale restrictions on parties to a transaction specified in Rule 145(a) and their affiliates, including small entities and their affiliates, except when the transaction involves a shell company. We believe that retaining the presumptive underwriter provision when the transaction involves a shell company is necessary, given the potential for abuse relating to such transactions.

G. Solicitation of Comments

We encourage you to submit written comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. In particular, we seek comment on: (a) The number of small entities that would be affected by the proposed rule; (b) the expected impact on small entities of the proposals as discussed above; and (c) a reliable means to quantify the number of small entities that would be affected by the proposed rules and the rules' impact on small entities.

We ask commenters to describe the nature of any impact and provide empirical data supporting the extent of the impact. We will consider comments when we prepare the Final Regulatory Flexibility Analysis if the proposed revisions are adopted. Persons wishing to submit written comments should file them with: Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. All comments received will be available for public inspection and copying at the SEC's Public Reference Room at the same address.

IX. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[188] a rule is ''major'' if it has resulted, or is likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a ''major rule'' for purposes of SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

X. Statutory Basis and Text of Proposed Amendments

We are proposing to adopt the amendments pursuant to Sections 2(a)(11), 4(1), 4(4), 7, 10, 19(a) and 28 of the Securities Act, as amended.

List of Subjects

17 CFR Part 230

Advertising, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

For the reasons set out above, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. Revise the authority citation for Part 230 to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 78mm, 78t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Amend § 230.144 by:

a. Revising the preliminary note;

b. Revising paragraphs (a)(3)(vi) and (a)(3)(vii), and adding paragraph (a)(3)(viii);

c. Revising paragraphs (b), (c), (d)(1), (d)(3)(i), (d)(3)(ii), and (d)(3)(viii);

d. Adding paragraphs (d)(3)(ix) through paragraphs (d)(3)(xii);

e. Revising the heading and the introductory text to paragraphs (e) and (e)(1);

f. Removing paragraph (e)(2);

g. Redesignating existing paragraph (e)(3) as paragraph (e)(2);

h. Revising newly redesignated paragraph (e)(2);

i. Revising paragraphs (f), the notes to paragraph (g)(3), paragraph (h) and paragraph (i); and

j. Removing paragraphs (j) and (k).

The revisions and additions read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

Preliminary Note: Rule 144 creates a safe harbor from the definition of the term ''underwriter'' found in Section 2(a)(11) of the Securities Act. If a sale of securities complies with all of the applicable provisions of Rule 144:

1. Any person who sells restricted securities will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction;

2. An affiliate or any person who sells restricted or other securities on behalf of an affiliate of the issuer will be deemed not to be engaged in a distribution and therefore not an underwriter for that transaction; and

3. The purchaser will receive securities that are not restricted securities.

This means that someone entitled to claim the safe harbor would be able to sell his or her securities under Section 4(1) of the Act.

Rule 144 is not an exclusive safe harbor. This means that a person who does not meet all the requirements of Rule 144 still may claim any other available exemption for resales under the Act. The Rule 144 safe harbor is not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(a) * * *

(3) * * *

(vi) Securities acquired in a transaction made under § 230.801 to the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, ''restricted securities'' within the meaning of this paragraph (a)(3);

(vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were ''restricted securities'' within the meaning of this paragraph (a)(3); and

(viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(6) (15 U.S.C. 77d(6)) of the Act.

[188] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

(b) *Conditions to be met.* Subject to paragraph (i) of this section, the following conditions must be met:

(1) *Non-Affiliates.* (i) If the issuer of the securities is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer, and has not been an affiliate during the preceding three months, who sells restricted securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of paragraphs (c)(1) and (d) of this section are met. The requirements of paragraph (c)(1) of this section shall not apply to restricted securities sold for the account of a person who is not an affiliate of the issuer at the time of the sale and has not been an affiliate during the preceding three months, provided a period of one year has elapsed since the later of the date the securities were acquired from the issuer or from an affiliate of the issuer.

(ii) If the issuer of the securities is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, any person who is not an affiliate of the issuer, and has not been an affiliate during the preceding three months, who sells restricted securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if the condition of paragraph (d) of this section is met.

(2) *Affiliates.* Any affiliate who sells restricted securities or any other securities of an issuer for his or her own account shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(3) *Persons selling on behalf of affiliates.* Any person who sells restricted or any other securities for the account of an affiliate of the issuer of such securities shall be deemed not to be an underwriter of those securities within the meaning of section 2(a)(11) of the Act if all of the conditions of this section are met.

(c) *Current public information.* Adequate current public information with respect to the issuer of the securities must be available. Such information will be deemed to be available only if at least one of the following conditions is met:

(1) *Reporting Issuers.* The issuer is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act and has filed all required reports under section 13 or 15(d) during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter); or

(2) *Non-reporting Issuers.* If the issuer is not subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, there is publicly available the information concerning the issuer specified in paragraphs (a)(5)(i) to (xiv), inclusive, and paragraph (a)(5)(xvi) of § 240.15c2–11 of this chapter, or, if the issuer is an insurance company, the information specified in section 12(g)(2)(G)(i) of the Exchange Act (15 U.S.C. 78*l*(g)(2)(G)(i)).

Note to § 230.144(c). With respect to paragraph (c)(1), the person can rely upon:

1. A statement in whichever is the most recent report, quarterly or annual, required to be filed and filed by the issuer that such issuer has filed all reports required under section 13 or 15(d) of the Exchange Act during the preceding 12 months (or for such shorter period that the issuer was required to file such reports), other than Form 8–K reports (§ 249.308 of this chapter), and has been subject to such filing requirements for the past 90 days; or

2. A written statement from the issuer that it has complied with such reporting requirements.

3. Neither type of statement may be relied upon, however, if the person knows or has reason to believe that the issuer has not complied with such requirements.

(d) * * *

(1) *General rule.* (i) If the issuer of the securities is, and has been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, a minimum of six months must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(ii) If the issuer of the securities is not, or has not been for at least 90 days immediately before the sale, subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, a minimum of one year must elapse between the later of the date of the acquisition of the securities from the issuer, or from an affiliate of the issuer, and any resale of such securities in reliance on this section for the account of either the acquiror or any subsequent holder of those securities.

(iii) If the acquiror takes the securities by purchase, the holding period shall not begin until the full purchase price or other consideration is paid or given by the person acquiring the securities from the issuer or from an affiliate of the issuer.

* * * * *

(3) * * *

(i) *Stock dividends, splits and recapitalizations.* Securities acquired from the issuer as a dividend or pursuant to a stock split, reverse split or recapitalization shall be deemed to have been acquired at the same time as the securities on which the dividend or, if more than one, the initial dividend was paid, the securities involved in the split or reverse split, or the securities surrendered in connection with the recapitalization.

(ii) *Conversions and exchanges.* If the securities sold were acquired from the issuer solely in exchange for other securities of the same issuer, the newly acquired securities shall be 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.

Note to § 230.144(d)(3)(ii). If the surrendered securities originally did not provide for cashless conversion or exchange by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the surrendered securities to permit cashless conversion or exchange, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the surrendered securities, so long as the conversion or exchange itself meets the conditions of this section.

* * * * *

(viii) *Rule 145(a) transactions.* The holding period for securities acquired in a transaction specified in § 230.145(a) shall be deemed to commence on the date the securities were acquired by the purchaser in such transaction, except as otherwise provided in paragraphs (d)(3)(ii) and (ix) of this section.

(ix) *Holding company formations.* Securities acquired from the issuer in a transaction effected solely for the purpose of forming a holding company shall be deemed to have been acquired at the same time as the securities of the predecessor issuer exchanged in the holding company formation where:

(A) The newly formed holding company's securities were issued solely in exchange for the securities of the predecessor company as part of a reorganization of the predecessor company into a holding company structure;

(B) Holders received securities of the same class evidencing the same proportional interest in the holding company as they held in the predecessor, and the rights and interests of the holders of such securities are substantially the same as those they possessed as holders of the predecessor company's securities; and

(C) Immediately following the transaction, the holding company has no significant assets other than securities of the predecessor company and its existing subsidiaries and has substantially the same assets and liabilities on a consolidated basis as the predecessor had before the transaction.

(x) *Cashless exercise of options and warrants.* If the securities sold were acquired from the issuer solely upon cashless exercise of options or warrants issued by the issuer, the newly acquired securities shall be deemed to have been acquired at the same time as the exercised options or warrants, even if the options or warrants exercised originally did not provide for cashless exercise by their terms.

Note 1 to § 230.144(d)(3)(x): If the options or warrants originally did not provide for cashless exercise by their terms and the holder provided consideration, other than solely securities of the same issuer, in connection with the amendment of the options or warrants to permit cashless exercise, then the newly acquired securities shall be deemed to have been acquired at the same time as such amendment to the options or warrants.

Note 2 to § 230.144(d)(3)(x): If the options or warrants are not purchased for cash or property and do not create any investment risk to the holder, as in the case of employee stock options, the newly acquired securities shall be deemed to have been acquired at the time the options or warrants are exercised, so long as the conditions of Rule 144(d)(1) and Rule 144(d)(2) are met at the time of exercise.

(xi) *Short sales and hedging transactions.* In computing the six-month holding period the following periods shall be excluded:

(A) If the securities sold are equity securities, as defined in § 230.405, there shall be excluded any period during which the person for whose account they are sold had a short position, or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any equity securities of the same class or any securities convertible into securities of such class; and

(B) If the securities sold are nonconvertible debt securities, there shall be excluded any period during which the person for whose account they are sold had a short position, or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any nonconvertible debt securities of the same issuer.

(C) If the holding period is based on a period that a previous owner has held the securities, there shall be excluded any period during which the previous owner had a short position or had entered into a ''put equivalent position'' (as defined in § 240.16a–1(h) of this chapter), with respect to any equity securities of the same class or any securities convertible into securities of such class, if the securities sold are equity securities, or with respect to any nonconvertible debt securities of the same issuer, if the securities sold are nonconvertible debt securities, unless the person for whose account the securities are sold reasonably believes that no such position was held by a previous owner.

Note to § 230.144(d)(3)(xi): This paragraph shall not apply if the holding period computed under paragraph (d) of this rule (excluding this paragraph) has been twelve months or more.

(xii) *Securities sold under paragraph (i)(2).* For the purposes of computing the holding period of securities sold under paragraph (i)(2) of this rule, securities of an issuer that has ceased to be an issuer described in paragraph (i)(1)(i) shall be deemed to have been acquired at the time the securities were acquired from the issuer, at the time they were acquired from an affiliate of the issuer, or at the time the ''Form 10 information'' regarding the issuer is filed with the Commission, whichever is the latest date.

(e) *Limitation on amount of securities sold by or for affiliates.* Except as hereinafter provided, the amount of securities which may be sold by or for affiliates in reliance upon this rule shall be determined as follows:

(1) If any securities are sold for the account of an affiliate of the issuer, regardless of whether those securities are restricted, the amount of securities sold, together with all sales of securities of the same class sold for the account of such person within the preceding three months, shall not exceed the greatest of:

* * * * *

(2) *Determination of amount.* For the purpose of determining the amount of securities specified in paragraph (e)(1) of this section, the following provisions shall apply:

(i) Where both convertible securities and securities of the class into which they are convertible are sold, the amount of convertible securities sold shall be deemed to be the amount of securities of the class into which they are convertible for the purpose of determining the aggregate amount of securities of both classes sold;

(ii) The amount of securities sold for the account of a pledgee of those securities, or for the account of a purchaser of the pledged securities, during any period of three months within six months after a default in the obligation secured by the pledge, and the amount of securities sold during the same three-month period for the account of the pledgor shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

Note to § 230.144(e)(2)(ii): Sales by a pledgee of securities pledged by a borrower will not be aggregated under paragraph (e)(2)(ii) with sales of the securities of the same issuer by other pledgees of such borrower in the absence of concerted action by such pledgees.

(iii) The amount of securities sold for the account of a donee of those securities during any three-month period within six months after the donation, and the amount of securities sold during the same three-month period for the account of the donor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

(iv) Where securities were acquired by a trust from the settlor of the trust, the amount of such securities sold for the account of the trust during any three-month period within six months after the acquisition of the securities by the trust, and the amount of securities sold during the same three-month period for the account of the settlor, shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section;

(v) The amount of securities sold for the account of the estate of a deceased person, or for the account of a beneficiary of such estate, during any three-month period and the amount of securities sold during the same three-month period for the account of the deceased person prior to his death shall not exceed, in the aggregate, the amount specified in paragraph (e)(1) of this section; *provided,* that no limitation on amount shall apply if the estate or beneficiary of the estate is not an affiliate of the issuer;

(vi) When two or more affiliates or other persons agree to act in concert for the purpose of selling securities of an issuer, all securities of the same class sold for the account of all such persons during any period of three months shall be aggregated for the purpose of determining the limitation on the amount of securities sold;

(vii) The following sales of securities need not be included in determining the

amount of securities sold in reliance upon this rule:

(A) Securities sold pursuant to an effective registration statement under the Act;

(B) Securities sold pursuant to an exemption provided by Regulation A (§ 230.251 through § 230.263) under the Act;

(C) Securities sold in a transaction exempt pursuant to section 4 of the Act (15 U.S.C. 77d) and not involving any public offering; and

(D) Securities sold offshore pursuant to Regulation S (§ 230.901 through § 230.905, and Preliminary Notes) under the Act.

(f) *Manner of sale.* (1) The securities shall be sold in *brokers' transactions* within the meaning of section 4(4) of the Act or in transactions directly with a *market maker,* as that term is defined in section 3(a)(38) of the Exchange Act, and the person selling the securities shall not:

(i) Solicit or arrange for the solicitation of orders to buy the securities in anticipation of or in connection with such transaction, or

(ii) Make 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.

(2) Paragraph (f)(1) shall not apply to:

(i) Securities sold for the account of the estate of a deceased person or for the account of a beneficiary of such estate provided the estate or estate beneficiary is not an affiliate of the issuer; or

(ii) Debt securities.

Note to § 230.144(f)(2): For the purposes of paragraph (f)(2), ''debt securities'' is defined to mean:

1. Any security other than an equity security as defined in § 230.405;

2. Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

3. Asset-backed securities, as defined in § 229.1101 of this section.

(g) * * *

(3) * * *

Note 1 to paragraph (g)(3): The broker, for his own protection, should obtain and retain in his files a copy of the notice required by paragraph (h) of this section.

Note 2 to paragraph (g)(3): The reasonable inquiry required by paragraph (g)(3) of this section should include, but not necessarily be limited to, inquiry as to the following matters:

1. The length of time the securities have been held by the person for whose account they are to be sold. If practicable, the inquiry should include physical inspection of the securities;

2. If the securities have been held for less than one year, the existence and character of any short position or put equivalent position with regard to the securities held by the person for whose account they are to be sold and whether such person has made inquiries about the existence and character of any short position or put equivalent position with regard to the securities held by the previous owner of the securities and the results of such person's inquiries;

3. The nature of the transaction in which the securities were acquired by such person;

4. The amount of securities of the same class sold during the past 3 months by all persons whose sales are required to be taken into consideration pursuant to paragraph (e) of this section;

5. Whether such person intends to sell additional securities of the same class through any other means;

6. Whether such person has solicited or made any arrangement for the solicitation of buy orders in connection with the proposed sale of securities;

7. Whether such person has made any payment to any other person in connection with the proposed sale of the securities; and

8. The number of shares or other units of the class outstanding, or the relevant trading volume.

(h) *Notice of proposed sale.* (1) If the amount of securities to be sold in reliance upon this rule during any period of three months exceeds 1,000 shares or other units or has an aggregate sale price in excess of $50,000, three copies of a notice on Form 144 (§ 239.144 of this chapter) shall be filed with the Commission at its principal office in Washington, DC. If such securities trade on any national securities exchange, one copy of such notice also shall be transmitted to the principal exchange on which such securities are traded.

(2) The Form 144 shall be signed by the person for whose account the securities are to be sold and shall be transmitted for filing concurrently with either the placing with a broker of an order to execute a sale of securities in reliance upon this rule or the execution directly with a market maker of such a sale. Neither the filing of such notice nor the failure of the Commission to comment on such filing shall be deemed to preclude the Commission from taking any action that it deems necessary or appropriate with respect to the sale of the securities referred to in such notice. The person filing the notice required by this paragraph shall have a bona fide intention to sell the securities referred to therein within a reasonable time after the filing of such notice.

(i) *Inapplicability to issuers with no or nominal operations and no or nominal non-cash assets.* (1) A selling security holder may not rely on this section to resell securities if the issuer of the securities is:

(i) An issuer, other than a business combination related shell company, as defined in § 230.405, or an asset-backed issuer, as defined in Item 1101(b) of Regulation AB (§ 229.1101(b) of this chapter), that has:

(A) No or nominal operations; and

(B) Either:

(*1*) No or nominal assets;

(*2*) Assets consisting solely of cash and cash equivalents; or

(*3*) Assets consisting of any amount of cash and cash equivalents and nominal other assets; or

(ii) An issuer that has been at any time previously an issuer described in paragraph (i)(1)(i).

(2) Notwithstanding paragraph (i)(1), if the issuer of the securities previously had been an issuer described in paragraph (i)(1)(i) but has ceased to be an issuer described in paragraph (i)(1)(i); is subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act; has filed all reports and other materials required to be filed by such requirements during the preceding 12 months (or for such shorter period that the registrant was required to file such reports and materials); and has filed current ''Form 10 information'' with the Commission reflecting its status as an entity that is no longer an issuer described in paragraph (i)(1)(i), then a security holder may resell those securities subject to the requirements of this rule 90 days after the ''Form 10 information'' is filed.

(3) The term ''Form 10 information'' means the information that is required by Form 10, Form 10–SB, or Form 20–F (§ 249.210, § 249.210b, or § 249.220f of this chapter), as applicable to the issuer of the securities, to register under the Securities Exchange Act of 1934 each class of securities being sold under this rule. The issuer may provide the Form 10 information in any issuer filing with the Commission.

3. Amend § 230.145 by revising paragraphs (c), (d) and (e) and removing the authority citation at the end of the section to read as follows:

§ 230.145 Reclassification of securities, mergers, consolidations and acquisitions of assets.

* * * * *

(c) *Persons and parties deemed to be underwriters.* For purposes of this section, if any party to a transaction specified in paragraph (a) of this section is a shell company, other than a business combination related shell company, as those terms are defined in § 230.405, any party to that transaction,

other than the issuer, or any person who is an affiliate of such party at the time such transaction is submitted for vote or consent, who publicly offers or sells securities of the issuer acquired in connection with any such transaction, shall be deemed to be engaged in a distribution and therefore to be an underwriter thereof within the meaning of Section 2(a)(11) of the Act.

(d) *Resale provisions for persons and parties deemed underwriters.* Notwithstanding the provisions of paragraph (c) of this section, a person or party specified in that paragraph shall not be deemed to be engaged in a distribution and therefore not to be an underwriter of securities acquired in a transaction specified in paragraph (a) of this section that was registered under the Act if:

(1) Any shell company specified in paragraph (c) of this section is no longer a shell company; and

(2) One of the following three conditions is met:

(i) Such securities are sold by such person or party in accordance with the provisions of paragraphs (c), (e), (f), and (g) of § 230.144 and at least 90 days have elapsed since the date the securities were acquired from the issuer in such transaction; or

(ii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least six months, as determined in accordance with paragraph (d) of § 230.144, have elapsed since the date the securities were acquired from the issuer in such transaction, and the issuer meets the requirements of paragraph (c) of § 230.144; or

(iii) Such person or party is not, and has not been for at least three months, an affiliate of the issuer, and a period of at least one year, as determined in accordance with paragraph (d) of § 230.144, has elapsed since the date the securities were acquired from the issuer in such transaction.

Note to paragraphs (c) and (d): Paragraphs (c) and (d) are not available with respect to any transaction or series of transactions that, although in technical compliance with the rule, is part of a plan or scheme to evade the registration requirements of the Act.

(e) *Definitions.* (1) The term *affiliate* as used in paragraphs (c) and (d) of this section shall have the same meaning as the definition of that term in § 230.405.

(2) The term *party* as used in paragraphs (c) and (d) of this section shall mean the corporations, business entities, or other person, other than the issuer, whose assets or capital structure are affected by the transactions specified in paragraph (a).

(3) The term *person* as used in paragraphs (c) and (d) of this section, when used in reference to a person for whose account securities are to be sold, shall have the same meaning as the definition of that term in paragraph (a)(2) of § 230.144.

4. Amend § 230.190 by:

a. Revising paragraphs (a)(2) and (a)(3); and

b. Adding paragraph (a)(4).

The revisions and addition read as follows:

§ 230.190 Registration of underlying securities in asset-backed securities transactions.

(a) * * *

(1) * * *

(2) Neither the issuer of the underlying securities nor any of its affiliates is an affiliate of the sponsor, depositor, issuing entity or underwriter of the asset-backed securities transaction;

(3) If the underlying securities are restricted securities, as defined in § 230.144(a)(3), § 230.144 must be available for the sale of the securities, provided however, that notwithstanding any other provision of § 230.144, § 230.144 shall only be so available if at least two years have elapsed since the later of the date the securities were acquired from the issuer of the underlying securities or from an affiliate of the issuer of the underlying securities; and

(4) The depositor would be free to publicly resell the underlying securities without registration under the Act. For example, the offering of the asset-backed security does not constitute part of a distribution of the underlying securities. An offering of asset-backed securities with an asset pool containing underlying securities that at the time of the purchase for the asset pool are part of a subscription or unsold allotment would be a distribution of the underlying securities. For purposes of this section, in an offering of asset-backed securities involving a sponsor, depositor or underwriter that was an underwriter or an affiliate of an underwriter in a registered offering of the underlying securities, the distribution of the asset-backed securities will not constitute part of a distribution of the underlying securities if the underlying securities were purchased at arm's length in the secondary market at least three months after the last sale of any unsold allotment or subscription by the affiliated underwriter that participated in the registered offering of the underlying securities.

* * * * *

§ 230.701 [Amended]

5. Amend § 230.701, paragraph (g)(3), to revise the phrase ''without compliance with paragraphs (c), (d), (e), and (h) of § 230.144'' to read ''without compliance with paragraphs (c) and (d) of § 230.144''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

7. Amend § 239.144 by revising paragraph (b) to read as follows:

§ 239.144 Form 144, for notice of proposed sale of securities pursuant to § 230.144 of this chapter.

* * * * *

(b) This form need not be filed if the amount of securities to be sold during any period of three months does not exceed 1,000 shares or other units and the aggregate sale price does not exceed $50,000.

* * * * *

8. Form 144 (referenced in § 239.144) is revised as set forth in the Appendix.

Dated: June 22, 2007.

By the Commission.

Nancy M. Morris,

Secretary.

Note: This Appendix to the Preamble will not appear in the Code of Federal Regulations.

Appendix

BILLING CODE 8010–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
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SEC USE ONLY
DOCUMENT SEQUENCE NO.
CUSIP NUMBER
WORK LOCATION

FORM 144
NOTICE OF PROPOSED SALE OF SECURITIES PURSUANT TO RULE 144 UNDER THE SECURITIES ACT OF 1933

ATTENTION: *Transmit for filing 3 copies of this form concurrently with either placing an order with a broker to execute sale or executing a sale directly with a market maker.*

1 *(a)* NAME OF ISSUER *(Please type or print)*	*(b)* IRS IDENT. NO.	*(c)* S.E.C. FILE NO.

1 *(d)* ADDRESS OF ISSUER	STREET	CITY	STATE	ZIP CODE	*(e)* TELEPHONE NO. AREA CODE	NUMBER

2 *(a)* NAME OF PERSON FOR WHOSE ACCOUNT THE SECURITIES ARE TO BE SOLD	*(b)* IRS IDENT. NO.	*(c)* RELATIONSHIP TO ISSUER	*(d)* ADDRESS STREET	CITY	STATE	ZIP CODE

INSTRUCTION: The person filing this notice should contact the issuer to obtain the I.R.S. Identification Number and the S.E.C. File Number.

3 *(a)* Title of the Class of Securities To Be Sold	*(b)* Name and Address of Each Broker Through Whom the Securities are to be Offered or Each Market Maker who is Acquiring the Securities	SEC USE ONLY Broker-Dealer File Number	*(c)* Number of Shares or Other Units To Be Sold *(See instr. 3(c))*	*(d)* Aggregate Market Value *(See instr. 3(d))*	*(e)* Number of Shares or Other Units Outstanding *(See instr. 3(e))*	*(f)* Approximate Date of Sale *(See instr. 3(f))* (MO. DAY YR.)	*(g)* Name of Each Securities Exchange *(See instr. 3(g))*

INSTRUCTIONS:

1. (a) Name of issuer
   (b) Issuer's I.R.S. Identification Number
   (c) Issuer's S.E.C. file number, if any
   (d) Issuer's address, including zip code
   (e) Issuer's telephone number, including area code

2. (a) Name of person for whose account the securities are to be sold
   (b) Such person's I.R.S. identification number, if such person is an entity
   (c) Such person's relationship to the issuer (e.g., officer, director, 10% stockholder, or member of immediate family of any of the foregoing)
   (d) Such person's address, including zip code

3. (a) Title of the class of securities to be sold
   (b) Name and address of each broker through whom the securities are intended to be sold
   (c) Number of shares or other units to be sold (if debt securities, give the aggregate face amount)
   (d) Aggregate market value of the securities to be sold as of a specified date within 10 days prior to filing of this notice
   (e) Number of shares or other units of the class outstanding, or if debt securities the face amount thereof outstanding, as shown by the most recent report or statement published by the issuer
   (f) Approximate date on which the securities are to be sold
   (g) Name of each securities exchange, if any, on which the securities are intended to be sold

Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

SEC 1147 (04-07)

TABLE I — SECURITIES TO BE SOLD

Furnish the following information with respect to the acquisition of the securities to be sold and with respect to the payment of all or any part of the purchase price or other consideration therefor:

Title of the Class	Date you Acquired	Nature of Acquisition Transaction	Name of Person from Whom Acquired *(If gift, also give date donor acquired)*	Amount of Securities Acquired	Date of Payment	Nature of Payment

INSTRUCTIONS: (1) If the securities were purchased and full payment therefor was not made in cash at the time of purchase, explain in the table or in a note thereto the nature of the consideration given. If the consideration consisted of any note or other obligation, or if payment was made in installments describe the arrangement and state when the note or other obligation was discharged in full or the last installment paid.

(2) If the person for whose account the securities are to be sold has held the securities for less than a year and has entered into a short position or a put equivalent position (as defined in Exchange Act Rule 16a-1(h)) with respect to the same class of securities, provide a description of that position, including the dates during which such position was held. Information regarding a short position or put equivalent position held by any previous owner should be provided to the extent known.

TABLE II — SECURITIES SOLD DURING THE PAST 3 MONTHS

Furnish the following information as to all securities of the issuer sold during the past 3 months by the person for whose account the securities are to be sold.

Name and Address of Seller	Title of Securities Sold	Date of Sale	Amount of Securities Sold	Gross Proceeds

REMARKS:

INSTRUCTIONS:
See the definition of "person" in paragraph (a) of Rule 144. Information is to be given not only as to the person for whose account the securities are to be sold but also as to all other persons included in that definition. In addition, information shall be given as to sales by all persons whose sales are required by paragraph (e) of Rule 144 to be aggregated with sales for the account of the person filing this notice.

ATTENTION:
The person for whose account the securities to which this notice relates are to be sold hereby represents by signing this notice that he 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. If such person has adopted a written trading plan or given trading instructions to satisfy Rule 10b5-1 under the Exchange Act, by signing the form and indicating the date that the plan was adopted or the instruction given, that person makes such respresentation as of the plan adoption or instruction date.

DATE OF NOTICE

DATE OF PLAN ADOPTION OR GIVING OF INSTRUCTION, IF RELYING ON RULE 10B5-1

(SIGNATURE)

The notice shall be signed by the person for whose account the securities are to be sold. At least one copy of the notice shall be manually signed. Any copies not manually signed shall bear typed or printed signatures.

ATTENTION: Intentional misstatements or omission of facts constitute Federal Criminal Violations (See 18 U.S.C. 1001)

SEC 1147 (04-07)

[FR Doc. 07–3217 Filed 7–3–07; 8:45 am]

BILLING CODE 8010–01–C