

SEC GRANTS NO-ACTION RELIEF FOR REPORTING TRANSACTIONS ON FORMS 4 AND 5

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On June 25, 2008, the SEC's Office of Chief Counsel, Division of Corporation Finance, issued a no-action letter granting relief to Section 16(a) reporting persons desiring to aggregate the reporting of same-day, same-way open market purchases or sales on Form 4 and Form 5 under Section 16(a) of the Securities Exchange Act of 1934 (the "Exchange Act"). The no-action letter reversed prior guidance, which required reporting persons to report each transaction on a separate line of the form. The no-action letter can be found on the SEC's website at: <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/scsgp062508-sec16.htm>.

The Society of Corporate Secretaries & Corporate Governance Professionals requested the Staff's relief, and argued that because brokers execute trades in small increments and report trades to the fourth decimal place, Section 16(a) reporting persons often must report dozens of transactions on multiple forms in order to report the execution of a single order. The Society also argued that this manner of reporting is confusing to the issuer's shareholders because it creates a perception that the reporting person made numerous independent decisions to trade at the reported prices.

Pursuant to the no-action letter, the Staff will not recommend enforcement



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action against a reporting person who reports all same-day, same-way transactions on a single line that fall within a one dollar price range, provided that the reporting person:

- (a) reports in the price column of the applicable form the weighted average purchase or sale price for the transactions reported on that line;
- (b) specifies in a footnote the range of prices for the transactions reported on that line; and
- (c) undertakes in a footnote to provide the SEC Staff, the issuer or any securityholder full information regarding the number of shares purchased or sold at each separate price.

The Staff specified that by footnoting the range of prices for the transactions, the issuer and other shareholders will maintain the ability

to determine whether the reporting person realized a short-swing profit for purchases of Section 16(b).

If execution of a single order spans a range of more than one dollar, a reporting person may still aggregate the transactions in the applicable form, but must do so on separate lines for each series of transactions that fall within each one dollar range. The weighted average purchase or sales price for each of the trades within each one dollar range would be reported in the price column for each line.

The no-action relief is limited to open market transactions reported using transaction codes "P" (purchases) and "S" (sales), respectively, and does not apply to transactions involving a combination of either direct and indirect forms of beneficial ownership or different forms of indirect beneficial ownership.

The no-action letter is not a rule, regulation or statement of the SEC and binds only the Office of the General Counsel with respect to persons addressed by the letter and the specific fact situation presented. However, the no-action letter was solicited by compliance professionals, and the Staff's relief communicated an apparent intent that the letter may be relied on by any reporting person.

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