

Client Alert

Corporate Department

July 3, 2008

SEC Provides Guidance on Aggregate Reporting of Multiple Same-Day, Same-Way Open Market Transactions on Section 16 Filings

On June 25, 2008, the SEC's Division of Corporation Finance (the "Division") issued a no-action letter (the "No-Action Letter") easing the general rule pertaining to Section 16 filings that requires each transaction to be reported on a separate line on Forms 4 and Forms 5.

The No-Action Letter provides that multiple same-day, same-way open market purchase or sale transactions at different prices that are executed by a broker-dealer may be reported by reporting persons on a single line of a Form 4 or Form 5 if the reporting person:

- reports on a single line all such transactions occurring within a \$1 price range,
- reports in the price column the weighted average purchase or sale price for the transactions reported on that line,
- includes a footnote specifying the range of prices for the transactions reported on that line and
- includes a footnote undertaking to provide detailed information regarding the number of shares purchased or sold at each separate price upon request by the SEC staff, the issuer or a security holder of the issuer.

This method of aggregate reporting is limited to open market purchases or sales that are reportable using transaction codes "P" and "S" only. This method cannot be used to report separate transactions that involve direct and indirect forms of beneficial ownership, or different forms of indirect beneficial ownership.

The information in the required footnote to the Form 4 or Form 5 specifying the price range will still allow investors to determine whether the transactions resulted in Section 16(b) short-swing profits, and the detailed information regarding the transactions that the reporting person will be required to furnish upon request will still allow investors to calculate the exact amount of any short-swing profits.

As it is commonplace for brokers to effect multiple transactions when satisfying a single market order, the Division's guidance may make it less burdensome to prepare and file Forms 4 and Forms 5 for some of our clients. Please feel free to contact any of the partners listed below or any corporate partner with whom you work if you wish to discuss the No-Action Letter or its application to your Section 16 filings.

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