



TROUTMAN SANDERS LLP

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SEC ISSUES FINAL RULES REGARDING ISSUER REPURCHASES

On November 10, 2003, the Securities and Exchange Commission adopted final rules amending the provisions of Rule 10b-18. Rule 10b-18 provides a safe harbor from potential liability for stock price manipulation in connection with issuer repurchases of common stock if the issuer meets the manner, timing, price and volume limitations of the rule.

The final rules amend in certain respects the timing and volume limitations on stock repurchases and provide for expanded disclosures of stock repurchases in an issuer's periodic filings with the SEC. A summary of the significant amendments is provided below. The full text of the final release is available at www.sec.gov/rules/final/33-8335.htm.

Easing of Limitations on Timing of Repurchases. The amendments permit an issuer whose stock has an average daily trading volume for the previous four weeks (ADTV) of \$1 million or more and a public float of \$150 million or more to make repurchases up to 10 minutes before the scheduled close of trading. Issuers of securities with an ADTV of less than \$1 million or a public float of less than \$150 million remain subject to the prior restrictions prohibiting repurchases during the last half-hour of trading.

In addition, the amendments extend the safe harbor to issuer repurchases completed after trading hours subject to the following limitations:

- an issuer repurchase can not be the opening transaction in the after-hours session;
- the price paid for repurchases does not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bid or sales prices subsequently reported in the consolidated system by other markets; and
- the repurchases comply with the manner, price and volume limitations of Rule 10b-18, except that the issuer may use a different broker or dealer for after-hours repurchases than it used during normal trading hours.

Block Purchases Now Included in Trading Volume Limitation. Under Rule 10b-18 an issuer's repurchases on any single day may not exceed 25% of the ADTV. The amendments require an issuer to include block purchases in calculating the 25% trading volume limitation. Issuers also may include their block purchases in the calculation of the four-week ADTV. The amendments also provide a block purchase alternative under which an issuer may make one block purchase per week in lieu of making purchases under the 25% volume limitation for that

particular day. In order to qualify for the safe harbor in connection with such a block purchase, no other Rule 10b-18 purchases may be effected that day and the block purchase may not be included when calculating a security's ADTV for purposes of the safe harbor. This alternative will provide an issuer of a thinly traded stock with flexibility to make a significant purchase each week that would otherwise exceed the 25% volume limitation under Rule 10b-18.

Restrictions on Repurchases Following the Announcement of a Merger or Acquisition.

The amendments provide that the safe harbor is not available for issuer repurchases following the public announcement of a merger or acquisition. Under the revised rule, repurchases made during the period commencing on the first public announcement of a merger or acquisition and ending on the earlier of the completion of the transaction or the completion of the vote by shareholders of the target company will not be eligible for the safe harbor, except as follows:

- the merger or acquisition is a transaction in which the only consideration is cash and there is no valuation period; or
- the total volume of Rule 10b-18 purchases on any day does not exceed the lesser of 25% of the security's ADTV or the issuer's average daily Rule 10b-18 repurchases during the three months preceding the announcement of the transaction, and the issuer's block purchases under Rule 10b-18 do not exceed the average size and frequency of the issuer's block purchases during the three months preceding the announcement of the transaction.

Amendment of Trading Volume Alternative Following Market-wide Trading Suspensions. The amendments increase the amount of common stock an issuer may repurchase in the trading session immediately following a market-wide trading suspension from 25% of the ADTV to 100% of the ADTV.

Expanded Reporting of Stock Repurchases. In order to enhance the transparency of issuer repurchases, the SEC also amended the quarterly and annual reporting requirements to require issuers to disclose all common stock repurchases during the reportable period, whether or not the repurchases were made under the Rule 10b-18 safe harbor. Under the new requirements, issuers are now required to disclose, among other things: (i) the total number of shares purchased; (ii) the average price paid per share; (iii) the number of shares purchased as part of a publicly announced plan or program; and (iv) the maximum number or approximate dollar value of shares that may yet be purchased under the plan or program.

The new repurchase disclosures are required on Forms 10-Q, 10-QSB, 10-K and 10-KSB and must appear for periods ending on or after March 15, 2004. For Form 20-F, the new disclosure requirements must appear for fiscal years ending on or after December 15, 2004.

Effective Dates. The amendments to Rule 10b-18 generally will be effective December 17, 2003.

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