

Client Alert

Date: February 19, 2008

Re: Effectiveness of Revised Rule 144

As we previously advised you in S&K's December 7, 2007 Capital Markets Bulletin, the U.S. Securities and Exchange Commission (the "SEC") published a release adopting amendments to Rule 144 under the Securities Act of 1933 (the "Securities Act"). The SEC noted that the amendments are intended to increase the liquidity of privately placed securities and decrease the cost of capital to issuers, primarily by shortening the required holding period for resales of "restricted securities" and by eliminating most of the regulatory burdens associated with such resales. These amendments became effective on February 15, 2008 and *apply to securities acquired both before and after the effective date*. For ease of reference, we have included the attached chart which summarizes the provisions of revised Rule 144.

We believe these recent amendments to Rule 144 may slowly start to alter the landscape of various transactions, including Private Investments in Public Equities (PIPEs), as well as issuances of convertible debt securities under Rule 144A. In particular, the shortened holding period may result in pricing discounts due to investors having improved liquidity and the reduction in, or elimination of, registration rights requirements and related liquidated damages clauses. For instance, under the newly revised Rule 144, non-affiliates may freely resell restricted securities after the expiration of a six month holding period so long as the issuer is current in its public filings. We believe that a new category of liquidated damages may be utilized in PIPEs transactions that requires issuers to pay liquidated damages if they fail to timely satisfy their reporting obligations. This type of liquidated damages provision may supplement or, in some cases, replace the existing registration requirements that are typically imposed on issuers to file a registration statement and have it declared effective by the SEC within defined time periods. As more deals come to market we will keep you updated on any trends that we observe in the PIPEs market and in other transactions resulting from the amendments to Rule 144.

Please contact your relationship partner at Seward & Kissel or any member of our Business Transactions Group or Capital Markets Group if you have any questions about this Client Alert or how the new amendments will impact your business or your transactions.

Summary of Revised Rule 144

Sale by	Affiliate	Non-Affiliate (and has not been an affiliate during the prior three months)	
Restricted Securities of Reporting Issuers	<p align="center"><u>During 6-month holding period</u></p> <p>No resales under Rule 144 permitted</p>	<p align="center"><u>During 6-month holding period</u></p> <p>No resales under Rule 144 permitted</p>	
	<p align="center"><u>After initial 6-month holding period</u></p> <p>Resales permitted subject to:</p> <ul style="list-style-type: none"> • <u>Current public information</u> Issuer must timely file all Securities Exchange Act documents • <u>Volume limitations</u> Greater of 1% of shares outstanding or average weekly trading volume in 4 prior calendar weeks* • <u>Manner of sale</u> Brokers' transaction, transaction directly with market maker or riskless principal transaction† • <u>Form 144</u> Must be filed with SEC if intended sales exceed 5,000 shares or \$50,000 	<p align="center"><u>After initial 6-month holding period</u></p> <p>Resales permitted subject to: ‡</p> <ul style="list-style-type: none"> • <u>Current public information</u> Issuer must timely file all Securities Exchange Act documents 	
			<p align="center"><u>After 1-year holding period</u></p> <p>Unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements</p>
		<p align="center"><u>During 1-year holding period</u></p> <p>No resales under Rule 144 permitted</p>	<p align="center"><u>During 1-year holding period</u></p> <p>No resales under Rule 144 permitted</p>
Restricted Securities of Non-reporting Issuers	<p align="center"><u>After 1-year holding period</u></p> <p>Resale permitted subject to:</p> <ul style="list-style-type: none"> • <u>Current public information</u> Issuer must timely file all Securities Exchange Act documents • <u>Volume limitation</u> Greater of 1% of shares outstanding or average weekly trading volume in 4 prior calendar weeks • <u>Manner of sale</u> Brokers' transaction, transaction directly with market maker or riskless principal transaction • <u>Form 144</u> Must be filed with SEC if intended sales exceed 5,000 shares or \$50,000 	<p align="center"><u>After 1-year holding period</u></p> <p>Unlimited public resales under Rule 144; need not comply with any other Rule 144 requirements</p>	

* For sales of debt securities: 10% of the tranche (or class of non-convertible participatory preferred stock)

† Not required for sales of debt securities

‡ In connection with a reverse merger, at least one year must pass from the time the issuer files its registration statement quality information (typically a "Super 8-K") before any of its restricted stock can be freely resold under Rule 144.