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To Our Clients:

RULE 145

Effective January 1, 1973, Rule 133 will be rescinded and replaced by Rule 145. Accordingly, mergers and stock-for-assets business combinations, "A" and "C" type reorganizations, join the "B" type exchange offer as "sales" requiring 1933 Act registration. Rule 145 embodies the determination by the SEC that the "no-sale" theory of Rule 133 is no longer consistent with the purpose of the 1933 Act to protect investors through registration and delivery of a prospectus. Rule 145 is premised on the theory that when security holders vote on a business combination, they are making an investment decision whether to accept a new security no different from that made in response to an exchange offer and, therefore, the same registration requirements should apply.

As finally adopted, Rule 145 reflects abandonment by the SEC of the proposal to restrict resales by holders of securities of the acquired company other than holders who were controlling persons of the acquired company. Rule 145 retains the Rule 133 approach of restricting only resales by such controlling persons. Resales of securities received in a 145 transaction by controlling persons of the acquired company will now be permitted under and subject to the limitations of Rule 144. The proxy rules and Form S-14 have been amended to facilitate registration of business combinations and the use of an S-14 prospectus for post-closing sales by affiliates.

Rule 145 reflects a fine balancing by the SEC of investor-protection policy considerations with the practical problems of business combinations and the trading market activities they engender. Together with Rule 144, the broadened availability of the short forms for registration and the changes in the 1934 Act reports, it represents substantial implementation of the Wheat Report recommendations. The following is a summary of Rule 145. Reference is made to our memorandum re Rule 144, dated October 3, 1972, for a summary of Rule 144.

January 1, 1973 Effective Date

Rule 133 is rescinded prospectively on and after January 1, 1973 except for any

(1) transaction submitted for approval to security-holders before January 1, 1973;

(2) transaction submitted for approval (required by law) to a governmental regulatory agency before January 1, 1973;

(3) resales of securities received in a transaction where Rule 133 applied.

Rule 145 is adopted effective on and after January 1, 1973 except that Rule 145 shall not apply to the foregoing transactions to which Rule 133 will continue to apply after January 1, 1973.

New Rule 153A with respect to delivery of prospectuses in Rule 145 transactions and the amendments to the proxy rules and Form S-14 will be effective January 1, 1973.

Relationship With Rule 144

Rule 133 transactions. Rule 144 is not available for resale of securities received in a 133 transaction except for securities received by persons who are or become controlling persons of the acquiring company. Such controlling persons may sell only under Rule 144 or in a registered sale or private placement. Securityholders of the acquired company who (a) receive securities in a 133 transaction, (b) are not and do not become controlling persons of the of the acquiring company and (c) were not controlling persons of the acquired company have "free" securities as to which there is no restriction on resale. Such securityholders who were in control of the acquired company in the 133 transaction, but were not and are not in control of the acquiring company may resell under Rule 133, but not Rule 144, or in registered sales or private placements.

Rule 145 transactions. Securityholders who (a) acquire securities in a 145 transaction, (b) were not controlling persons of the acquired company and (c) are not and do not become controlling persons of the acquiring company have "free" securities.

Securityholders of the acquired company in a 145 transaction who were controlling persons of the acquired company or were or become controlling persons of the acquiring company may resell under Rule 144, or in registered sales or private placements.

Private-placement business combinations. Rule 144 is available for securities received in business combinations where the acquired company has a small number of shareholders and the facts are such (all shareholders sophisticated or represented by a sophisticated negotiator, access to information, etc.) as to establish a non-public offering by the acquiring company. However, tacking of the period of ownership of the securities of the acquired company is not permitted. Thus, except in the case of death of a securityholder after the transaction - Rule 144 does not prescribe a holding period in such cases - the two-year holding period of Rule 144 must be satisfied before securities received in a private-placement business combination can be resold under Rule 144. The SEC continues to consider the question of tacking in this situation and indicates that it will provide guidance (perhaps relief) in the near future.

Transactions Covered by Rule 145

The submission to securityholders for vote or consent of any of the following transactions is covered by Rule 145 and requires registration:

(1) Mergers and consolidations other than (a) those in which the securityholders of the acquired company receive only cash or other property not within the definition of security or (b) where the sole purpose of the transaction is to change a company's state of incorporation.

(2) Assets for securities transactions where the securities of the acquiring company are to be distributed to the securityholders of the acquired company as part of the transaction or pursuant to a plan adopted within one year after, or conceived prior to, the vote or consent.

(3) Reclassifications of securities other than (a) stock splits, (b) reverse stock splits or (c) changes in par value which involve the substitution of one security for another security. Reclassifications where no payment by

the exchanging securityholders is made and no commissions or fees are paid for soliciting the exchange or reclassifications by a company which has its principal business and all its securityholders in the same state, although covered by Rule 145, may be exempt from registration under §§ 3(a)(9) and 3(a)(11) of the 1933 Act, respectively. These are difficult questions requiring careful consideration by counsel.

Business entities other than corporations -- such as trusts, limited partnerships, syndicates and associations -- are also covered by Rule 145.

Rule 145 applies to business combinations or reclassifications by non-U.S. entities that have U.S. securityholders.

Registration and Prospectus
Requirements Under Rule 145

Transactions covered by Rule 145 can be registered on Form S-14 or Form S-1. The S-14 registration statement is basically a typical proxy statement (whether or not the company is subject to the proxy rules) with a cover page. When an S-1 is used, the format is a prospectus of the exchange-offer type rather than a proxy statement.

The S-14 proxy-statement prospectus or the S-1 prospectus must be delivered to all securityholders (of record, entitled to vote or consent, at their address of record on the transfer records) prior to the meeting to vote on the 145 transaction or, with respect to actions taken by consent, prior to the earliest date on which the corporate action may be taken. If the S-14 proxy-statement prospectus is used, it must be delivered at least 20 days before the meeting or the consent action is effectuated unless state law provides for a shorter notice period, in which case the S-14 can be used if the shorter state law notice period is complied with. In practical effect, 145 transactions will be handled in the same manner as business combinations subject to the proxy rules have been handled with the added factor of 1933 Act registration statement liability for the proxy statement.

Form S-14 has been amended so that it can be used by any company, whether or not it is subject to the proxy rules. In either case, it is the proxy rule information and disclosure requirements that must be complied with. The proxy rules have been amended so that the S-14 filing will satisfy the proxy statement filing requirements.

The S-14 may be used for resales of securities received by controlling persons of the acquired company. If it is so used, it has to have a wrap-around cover page containing the usual information about the distribution, and information with respect to consummation of the transaction and any other information necessary to make it current. The former practice of filing an S-14 before the effective date of the transaction so that it becomes effective on the date of the transaction thus permitting immediate resales has been continued. However, if the transaction is intended to be a pooling of interests for accounting purposes, ASR 130 would deny pooling treatment if the resales are registered in advance of the effective date of the transaction. See our memorandum dated October 9, 1972.

Forms S-7 and S-16 may not be used for 145 transactions. They may be used for resales by shareholders of the acquired company where the acquiring company is eligible to use such forms.

Announcements of transactions subject to Rule 145 are now governed by Rule 145 which prescribes the usual limited announcement as at present for exchange offers under Rule 135.

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