February 12, 2010

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

Re: Release No. 34-61414 (File No. S7-04-10): Proposed amendments to Rule 10b-18 of the Securities and Exchange Act of 1934

Dear Ms. Murphy:

I want to respond specifically to the question that you pose in Part III B 4 (p. 38) in your request for public comment. The question asks:

> Q. Should the Rule 10b-18 safe harbor be available for issuer repurchases during periods when an issuer's insiders are selling their own shares of the issuer's stock? If not, please provide specific suggestions regarding what, if any, limitations should be placed on the availability of the safe harbor during such periods.

I believe that permitting such repurchases would give rise to a substantial conflict of interest on the part of the issuer's executives. As you note throughout your supplementary document, the effect of an issuer's repurchase of its own stock will be to temporarily raise demand for its shares, in turn driving up the price. As such, an issuer's executives will benefit if, at the point in time when they decide to sell their own shares, the issuer implements a repurchase program. Ideally executives with the capacity to influence when a repurchase takes place will consider only the issuing corporation's interests in their deliberations. However, if they are permitted to sell their own stock in the midst of a repurchase, they will have a personal financial incentive to align the issuer's repurchase with their own sale of the issuer's stock.

That said, the potential change in the Rule 10b-18 safe harbor provision does not *ban* insider stock sales in the midst of a repurchase program. It only denies safe harbor protection under Rule 10b-18 to the repurchases themselves. Thus, even if the proposed amendment is passed, insiders may still adjust the timing of a corporation's repurchase program to correspond with their own sale of the issuer's stock. And thus, even if the proposed amendment is passed, the conflict of interest described above will still exist.

However, suppose that the amendment passes and, consequently, a corporation has to forfeit safe harbor protection for stock repurchases in the event that its insiders sell their own stock concurrently with those repurchases. In that case, corporations may be led to issue their *own* ban on insider stock sales in the midst of a repurchase program. Or at the very least, insiders will face much tighter scrutiny by members of the board, and possibly by the stockholders themselves, should they decide to implement a repurchase program at the same time that they sell their own stock. For by doing so they would have deprived the repurchase of crucial safe harbor protection.

Thank you for considering my comment.

Sincerely,

J.S.

JD candidate, Stanford Law School