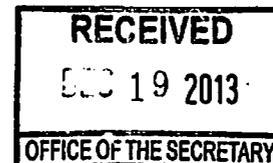


4-671



Jesse M. Brill



December 18, 2013

Elizabeth M. Murphy, Esq.
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Petition for Combining Form 144 With Form 4

Dear Ms. Murphy:

By this Petition, and in accordance with Rule 192 of the Securities and Exchange Commission's Rules of Practice, the undersigned respectfully requests that the Commission revise its rules and regulations so that Form 144 be combined into Form 4. In an era where investors expect all filings made with the SEC to be available electronically on EDGAR, the time has come for the last SEC form still allowed to be filed in paper to be filed via EDGAR—and, at the same time, combined with Form 4 to achieve substantial savings.

Background

EDGAR Form 144 Filings - The SEC's EDGAR system became mandatory for public companies during a phase-in period that ended in 1996. At the time, the SEC decided not to mandate electronic filing of Forms 144 (or Section 16(a) reports). Instead, the SEC programmed the EDGAR system to accept electronic filings of Form 144 (and Forms 3, 4 and 5) and amended Rule 101(b) of Regulation S-T to make electronic filing of those forms voluntary. (See Rel. No. 33-7241 (1995).) The SEC later made electronic filing of Section 16(a) reports mandatory, as directed by Section 403 of the Sarbanes-Oxley Act of 2002, but electronic filing of Form 144 remains voluntary – and it is rare that voluntary filings happen in practice. (See Rel. No. 33-8230, n. 35 (2003).)

How the Form 144 Filing Deadline Works - Form 144 must be "filed" concurrently with an affiliate's placement of a sell order with a broker or sale of securities directly to a market maker. Where an affiliate files a Form 144 in paper, the form ordinarily is filed by placing it in the mail on the date the sell order is placed or the sale to a market maker occurs. The filing is considered timely (*i.e.*, is considered to be filed "concurrently") if the form is mailed any time on the due date, even if after the order is executed—even though it may take days before the form is actually received at the SEC and publicly filed. See *Compliance and Disclosure Interpretations, Securities Act Rules*, Q. 136.09 (Mar. 4, 2011). The current system therefore allows Form 144 to be made publicly available well after execution of the sale covered by the form. When filed via EDGAR, a Form 144 must be filed on its due date.

Reasons for this Petition

1. **Cost & Time Savings** – The primary reason to eliminate all Form 144 filings by simply combining Form 144 into Form 4 is to save time and money, both for companies and the SEC (and even the stock exchanges).

Back In 1997, the SEC estimated the cost of simply preparing a Form 144 to be \$200 (two hours times a compensation rate of \$100 an hour). (See Rel. No. 33-7390). More recently, in the release adopting the 2007 amendments to Rule 144 (Rel. No. 33-8869), the SEC estimated that preparation of a Form 144 would require one hour but did not estimate an hourly cost. The SEC's estimates appear low, however, because they do not take into account the elaborate Rule 144 compliance procedures at brokerage firms.

Generally, it is the brokerage firm (coordinating between the firm's compliance personnel and the individual account executives in the field) that, in fact, prepares the Form 144 and then sends the Form 144 to the client to review and sign. The brokerage firm then makes four copies of the Form and mails them to the SEC and the exchange. Our estimate is that three hours at an hourly rate of \$150 is more realistic (\$450 per filing).

Multiplied by the approximately 32,000 Forms 144 filed in 2010, combining Form 144 with Form 4 would amount to at least \$14 million in savings per year. The 2010 numbers are the most recent numbers we have. We assume that the current number of filings is higher.

And, those savings do not include the postage (to mail to both the SEC and the exchange), the waste involved in photocopying the forms and retaining copies at the brokerage firms—and the cost of receiving, processing, filing and storing the forms at both the SEC and the exchanges. It would not surprise us if all these additional costs would at least double this number, bringing us to approximately \$28 million per year, not to mention the cost of wasted resources—paper and envelopes which then need to be disposed of.

In addition, think of all the time and resources and other costs the SEC is incurring just to receive and make public the mailed Forms 144, including opening the envelopes containing the three copies of the paper Forms 144, sorting them and then having to pay employees who file one copy in the SEC's Public Reference Room and then send to and pay the Washington National Records Center to store another copy for the requisite six years (plus shred and dispose of the third copy, which has never been used for any purpose), not to mention the file cabinets and storage space that is wasted. Similar costs and waste occur at the exchanges.

2. **Investors Would Receive Form 144 Information Sooner** – Although Form 144 is referred to as a notice of proposed sales, in reality the Form 144 is not received by the SEC until well after the “proposed” sale has occurred. Because Form 4 must be filed within two business days of the reported sale, in most cases the “proposed” sale has already been reported as an actual sale by the time the Form 144 becomes publicly available. Since filing of Form 4s precedes the public availability of the Forms 144 today, combining the forms would result in investors receiving the information filed on Form 144 sooner than they do under the current filing framework.

The Fix: Simple Tweaks to the Form 4

Together with Alan Dye and Peter Romeo, we have come up with a few simple tweaks to the current Form 4 so that it can also be used as a Form 4/Form 144—with only minimal design or programming changes. The only change to page one of the form is to add the words “Form 144” and a box to check. And the only change to page two of the form is to add a Table III with the seller's 144 acquisition and disposition information and the Form 144 boilerplate representation at the signature line. Attached is the proposed new Form 4/Form 144 to show how simple it is.

We should also point out that combining the forms would not result in any additional persons having to obtain Edgar Filer Access codes, because virtually all 144 filers are affiliates--officers, directors or 10% shareholders--and already have access codes.

We appreciate that the Commission's plate is full these days, but we believe that this fix can be accomplished quickly, realizing substantial savings and benefits for all.

Respectfully submitted,


Jesse M. Brill

FORM 4/FORM 144 (continued)

Table II - Derivative Securities Acquired, Disposed of, or Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

1. Title of Derivative Security or Debt Security (Instr. 3)	2. Conversion or Exercise Price of Derivative Security	3. Transaction Date (Month/Day/Year)	3A. Deemed Execution Date, if any (Month/Day/Year)	4. Transaction Code (Instr. 8)		5. Number of Derivative Securities Acquired (A) or Disposed of (D) (Instr. 3, 4 and 5)		6. Date Exercisable and Expiration Date (Month/Day/Year)		7. Title and Amount of Underlying Securities (Instr. 3 and 4)		8. Price of Derivative Security (Instr. 5)	9. Number of Derivative Securities Beneficially Owned Following Reported Transaction(s) (Instr. 4)	10. Ownership Form of Derivative Security Direct (D) or Indirect (I) (Instr. 4)	11. Nature of Indirect Beneficial Ownership (Instr. 4)
				Code	V	(A)	(D)	Date Exercisable	Expiration Date	Title	Amount or Number of Shares				

TABLE III -- FORM 144 ACQUISITION INFORMATION

DISPOSITION INFORMATION

Title of Security	Number of Securities Sold and to be Sold under Rule 144*	Date Acquired*	Nature of Acquisition*	Name of Person From Whom Acquired*	Amount Acquired*	Date of Payment*	Nature of Payment*	Name and Address of Broker/Market Maker*	Date of Sale**	Amount Sold**	Gross Proceeds**

*Provide this information regarding securities covered by this Form, including any securities reported in the tables above.

** Provide this information for the Rule 144 aggregation requirement for sales made during the preceding three months (do not include the Rule 144 sale covered by this Form)

Explanation of Responses Remarks:

** Signature of Reporting Person

Date

**** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).** If this form is being filed pursuant to Rule 144 under the Securities Act of 1933, the Reporting Person represents that, as of the date of any open market sale reported herein or, if any such sale was made pursuant to a trading plan or instruction in reliance on Rule 144(b) under the Securities Exchange Act of 1934, as of the date such trading plan or instruction was entered into, or as of the date which date shall be reported in this form, the Reporting Person did not know of any material adverse information regarding the current or prospective operations of the issuer that had not been publicly disclosed as of such date.