

Allen & Overy LLP
One New Change
London EC4M 9QQ United Kingdom

Tel +44 (0)20 7330 3000
Fax +44 (0)20 7330 9999

Via email: rule-comments@sec.gov

Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609
Attn: Mr. Jonathan G. Katz, Secretary

27 August 2004

Dear Mr. Katz:

Re: Ownership Reports and Trading by Officers, Directors and Principal Security Holders (File No. S7-27-04)

Allen & Overy LLP welcomes the opportunity to comment on the proposed amendments set out in Release Nos. 34-49895, 35-27861 and IC-26471 (the **Release**) in which the Securities and Exchange Commission (the **Commission**) solicited comment on the proposed amendments to Rules 16b-3 and 16b-7 relating to the scope of certain exemptions to Section 16(b) of the Securities Exchange Act of 1934, as amended (the **Exchange Act**).

We support and agree with the Commission and previous commentators that amendments are necessary in order to eliminate the uncertainty relating to the scope of the exemptions provided by Rules 16b-3 and 16b-7 that has resulted from the decision in *Levy v. Sterling Holding Company, LLC*, 314 F.3d 106 (3d Cir. 2002), *cert. denied*, 124 S. Ct. 389 (U.S. Oct. 14, 2003). This decision has created difficulties for issuers and insiders in planning legitimate transactions in reliance on the exemptions provided by Rules 16b-3 and 16b-7. We believe that the Commission's proposed amendments represent an important step towards resolving these difficulties. In response to the Commission's request, we offer the following comments on the proposed amendments to Rule 16b-7 where the proposed amendments may benefit from further clarification or adaptation. Although the views expressed in this letter are our own, our comments have been informed by discussions with a number of our clients.

We strongly support the Commission's proposed amendments to Rule 16b-7 which we believe will help to resolve the uncertainty in the intended scope of the exemption. In particular, we believe the proposed substitution of "merger, reclassification or consolidation" for each occurrence of "merger or consolidation" in the Rule and the addition of proposed paragraph (c) will be useful in clarifying the intended scope of the Rule and addressing the uncertainty created by the Third Circuit's decision in *Levy*.

As counsel to many foreign companies, we also believe that enacting amendments to Rule 16b-7 provides an important opportunity to resolve any uncertainty that exists in its application to certain foreign issuers and transactions in foreign jurisdictions. Rule 3a12-3 under the Exchange Act, of course, exempts non-U.S. companies that are foreign private issuers from Section 16(b). Nonetheless, Section 16(b) applies to foreign

registrants that are not foreign private issuers and we respectfully suggest that the Commission take this opportunity to clarify the manner in which Rule 16b-7 applies to transactions involving such companies.

In particular, in response to the questions set forth in the Release and in accordance with the Commission's previous interpretations and its goal of treating transactions with equivalent economic substance consistently and to preclude further uncertainty or misinterpretation, we respectfully suggest that Rule 16b-7 be further amended and expanded to include explicitly within its exemptive scope other corporate transactions in addition to mergers, reclassifications and consolidations that do not effect any major changes in a corporation's business or assets. Such transactions, which are variously defined in foreign jurisdictions, include domestication transactions, share exchange arrangements, amalgamations, schemes of arrangement and other similar corporate reorganization transactions.

For example, under English law, schemes of arrangement between a company and its shareholders are often utilized to effect various forms of corporate reorganizations under the supervision of a court. Allen & Overy frequently acts as counsel for foreign entities involved in such transactions in which there is no significant change in the business or assets of a corporation. A scheme of arrangement, however, is not specifically identified as an exempt transaction under the Rule. While many such transactions would satisfy the requirements of Rule 16b-7, in the absence of an acknowledgement of these and similar transactions in other jurisdictions, foreign registrants that do not qualify for another exemption from Section 16(b) of the Exchange Act will still face the uncertainty that legitimate transactions not specifically enumerated in Rule 16b-7 may be interpreted by a court to fall outside its exemptive scope. This could subject company insiders to risk under Section 16(b), which, in light of the purposes of this Section and the intent of Rule 16b-7, would in our view be inappropriate.

The Staff of the Commission has noted previously that corporate transactions in foreign jurisdictions may qualify for the exemption provided by Rule 16b-7 even if they are not, for example, strictly defined under local law as a merger or consolidation. In at least one case, the Staff has acknowledged in no-action correspondence that English law does not have an equivalent to a merger or consolidation statute and stated that, under the specific facts presented, an exchange offer that was designed to redomicile a company into the United States and that would not result in any significant change in the character or structure of the company could be the substantive equivalent of a merger, consolidation or sale of assets and would be eligible for the Rule 16b-7 exemption assuming all conditions of the Rule were met. See *Manpower plc*, (Mar. 14, 1991). Similarly, the Staff has taken the view that an amalgamation effected under Canadian law can fall within the intended operation of Rule 16b-7. See *Varity Corp.*, (Oct. 15, 1991).

We respectfully suggest that the Commission take this opportunity to amend Rule 16b-7 to confirm these Staff positions to ensure that the application of the Rule is consistent with previous guidance. In particular, we believe that Rule 16b-7 should expressly recognize that domestication transactions and other similar corporate reorganization transactions, however defined under local law, are eligible for exemption under Rule 16b-7 provided the necessary elements are met.

We appreciate this opportunity to comment on the proposed rules, and would be happy to discuss any questions the Commission may have about these comments or provide further information the Commission may find helpful in evaluating them.

Please direct any correspondence regarding this comment letter to Daniel Epstein at Daniel.Epstein@allenoverly.com or the address above.

Kind regards,

Allen & Overy LLP