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& M A W

August 18, 2004

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**VIA E-MAIL**

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

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Re: **Ownership Reports and Trading by Officers,  
Directors and Principal Security Holders  
Release Nos. 34-49895; 35-27861; IC-26471  
File No. S7-27-04**

Ladies and Gentlemen:

We would like to voice our support for the Commission's proposed amendments to Rules 16b-3 and 16b-7 under the Securities Exchange Act of 1934 and Item 405 of Regulations S-K and S-B, described in the above Release, and to the comments submitted on August 16, 2004 by the Committee on Federal Regulation of Securities of the American Bar Association's Business Law Section (the "Committee"). The proposed amendments provide a much-needed correction to the unfortunate interpretation of those rules by the court in *Levy v. Sterling Holding Company, LLC*, 314 F.3d 106 (3d Cir. 2002), *cert. denied*, *Sterling Holding Co. v. Levy*, 124 S. Ct. 389 (U.S. Oct. 14, 2003), and we appreciate the Commission's willingness to reinforce its interpretation of its rules through these amendments.

We believe, though, that neither the Commission's proposed amendment to Rule 16b-7 nor the additional paragraph (b)(2) suggested by the Committee letter may be sufficient to encompass the Commission's views on the exemptive scope of Rule 16b-7. Over the years, the Staff of the Commission's Division of Corporation Finance has applied the exemption provided by the rule in "no-action" responses involving a variety of transactions that were not literally mergers, reclassifications or consolidations but that had quite similar effects. These include transactions such as amalgamations under the Canadian Business Corporations Act (Varity Corp., March 14, 1991), statutory share exchange procedures under Maryland law (United States Fidelity and Guaranty Co., October 9, 1981) and Virginia law (Philip Morris, Inc., March 15, 1985), amendments to the company's articles of incorporation in connection with a distribution to shareholders of shares of a subsidiary which would become a new holding company (Florida Power & Light Co., November 19, 1984), and exchange offers under the Companies Act of 1985 of Great Britain (Manpower, plc, March 14, 1991) (the Manpower request letter points out that English law does not have an equivalent to a merger or consolidation statute, but provides other feasible alternatives called a scheme of arrangement and a scheme of reconstruction).

Brussels Charlotte Chicago Cologne Frankfurt Houston London Los Angeles Manchester New York Palo Alto Paris Washington, D.C.  
Independent Mexico City Correspondent: Jauregui, Navarrete, Nader y Rojas, S.C.

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We are concerned that a court following the very restrictive approach of the Levy court could find that the rule, as proposed to be amended, did not encompass amalgamations, statutory share exchanges, exchange offers under English law, plans or "schemes" of arrangement or reconstruction or other procedures having substantially similar effects that would otherwise satisfy the provisions of Rule 16b-7 but are not the procedures specified in the rule. We think that the amended rule would more clearly cover the Commission's past interpretive positions and remove this concern by combining and broadening present paragraph (b) of the rule and the Committee's proposed paragraph (b)(2), rather than having separate, more limited, definitions of "merger" and "reclassification." We suggest that paragraph (b) be revised as follows:

(b) A merger, reclassification and consolidation within the meaning of this section shall include the sale or purchase of substantially all the assets of one company by another in exchange for equity securities which are then distributed to the security holders of the company that sold its assets and any other transaction in which one or more classes or series of a company's outstanding securities are replaced with securities of a different class or series of securities of that company or another company involved in the transaction, or the terms of such class or series are changed, through an exchange, conversion, amendment or any other action having a similar effect.

Please call either Robert E. Curley (312-701-7306) or Michael L. Hermsen (312) 701-7960) if you would like to discuss any of these matters.

Very truly yours,

Mayer, Brown, Rowe & Maw LLP

By: /s/ Robert E. Curley

/s/ Michael L. Hermsen

REC:MLH/jc