

THE ASSOCIATION OF THE BAR  
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COMMITTEE ON CORPORATION LAW

February 18, 2003

VIA E-MAIL: [rule-comments@sec.gov](mailto:rule-comments@sec.gov)

Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

Attn: Mr. Jonathan G. Katz, Secretary

Re: File No. S7-50-02--Rule 10b-18 and Purchases of Certain Equity Securities by the Issuer and Others

Ladies and Gentlemen:

This letter is submitted on behalf of the Committee on Corporation Law of the Association of the Bar of the City of New York (the "Committee") in response to Release Nos. 33-8160; 34-46980; IC-25845 in which the Securities and Exchange Commission (the "Commission") announced proposed amendments to Rule 10b-18 under the Securities Exchange Act of 1934, as amended.

Our Committee is composed of lawyers with diverse perspectives on corporate law issues, including members of law firms, and in-house counsel at government agencies, corporations, investment banks and investors.

The Committee supports the Commission's efforts to refine the safe harbor provisions of Rule 10b-18 and enhance the transparency of issuer stock repurchases. The committee has determined that one aspect of the proposed amendment falls within the Committee's area of concern and merits comment.

**Exclusion from Definition of "Rule 10b-18 Purchase" of Purchases Occurring after Time of Shareholder Vote and/or End of the Valuation Period.**

The proposed definition of "Rule 10b-18 purchase" would have the effect of excluding from the safe harbor provisions of Rule 10b-18 any purchase "[E]ffected during the period from the time

of public announcement of [a] merger, acquisition or similar transaction involving a recapitalization, until the completion of such transaction.”

The Committee believes that current restrictions on issuer repurchases during the proxy solicitation period and the pricing period pursuant to Regulation M are appropriate and adequate to address the reasonable concerns regarding the potential for manipulative abuse in connection with mergers, acquisitions or similar transactions. To exclude from the definition of “Rule 10b-18 purchase” any purchase which occurs from the public announcement of an M&A or similar transaction until the completion of the transaction is not necessary, in the view of the Committee, to avoid manipulative abuse.

The Committee believes that this aspect of the proposed amendment would be unreasonably restrictive in many instances, particularly as regards companies in regulated industries, including banking, insurance, telecommunications and others, where the necessity of obtaining regulatory approvals before merger transactions can be completed may operate to delay the closing of the transaction for months. Balancing the negative impact this proposed amendment would have on legitimate issuer stock repurchases against the absence of a need for such additional restriction, the Committee recommends that the Commission omit this restriction from any amended rule.

Respectfully Submitted,

/s/ Mark Wojciechowski  
Mark Wojciechowski, Chair  
Committee on Corporation Law

cc: Alan Beller, Director  
Division of Corporation Finance  
Securities and Exchange Commission

Annette L. Nazareth, Director  
Division of Market Regulation  
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