

**SECURITIES AND EXCHANGE COMMISSION****17 CFR Parts 228, 229, 240, 249, 270, and 274**

[Release Nos. 33-8335; 34-48766; IC-26252; File No. S7-50-02]

RIN 3235-AH37

**Purchases of Certain Equity Securities by the Issuer and Others****AGENCY:** Securities and Exchange Commission.**ACTION:** Final rule.

**SUMMARY:** We are adopting amendments to Rule 10b-18 under the Securities Exchange Act of 1934 (Exchange Act), which provides issuers with a “safe harbor” from liability for manipulation when they repurchase their common stock in the market in accordance with the Rule’s manner, timing, price, and volume conditions. The amendments are intended to simplify and update the safe harbor provisions in light of market developments since the Rule’s adoption. To enhance the transparency of issuer repurchases, we also are adopting amendments to a number of regulations and forms to require disclosure of all issuer repurchases (open market and private transactions), regardless of whether the repurchases are effected in accordance with the safe harbor rule.

**DATES:** *Effective Date:* December 17, 2003, except §§ 270.23c-1(a)(11) and 274.201 are effective July 15, 2004.

*Compliance Dates:* The following compliance dates apply to the amendments that require periodic disclosure of all issuer repurchases. The repurchase disclosure required by new Item 2(e) of Forms 10-Q and 10-QSB and new Item 5(c) of Forms 10-K and 10-KSB must appear in reports filed on these forms for periods ending on or after March 15, 2004. The disclosure required by new Item 16E of Form 20-F must appear in Form 20-F reports filed for fiscal years ending on or after December 15, 2004.

The repurchase disclosure required by new Item 8 and Item 10(a)(3) of Form N-CSR must appear in reports filed on this form by registered closed-end management investment companies for periods ending on or after June 15, 2004. A registered closed-end management investment company need not file reports on Form N-23C-1 with respect to any repurchases during any calendar month following June 2004.

**FOR FURTHER INFORMATION CONTACT:**

James Brigagliano, Assistant Director, Joan Collopy, Special Counsel, or Elizabeth Sandoe, Special Counsel,

Office of Risk Management and Control, Division of Market Regulation, at (202) 942-0772, or, with respect to the disclosure amendments, Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942-2900, or, John Faust, Attorney Adviser, Office of Disclosure Regulation, Division of Investment Management, at (202) 942-0721, at the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** We are adopting amendments to Rule 10b-18 under the Exchange Act [17 CFR 240.10b-18], Regulations S-K and S-B [17 CFR 229.703 and 228.703], Exchange Act Forms 10-Q [17 CFR 249.308a], 10-QSB [17 CFR 249.308b], 10-K [17 CFR 249.310], 10-KSB [17 CFR 310b], and 20-F [17 CFR 249.220f], Form N-CSR under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act) [17 CFR 249.331 and 274.128], and Rule 23c-1 [17 CFR 270.23c-1], and Form N-23C-1 [17 CFR 274.201] under the Investment Company Act.

**I. Introduction**

On December 10, 2002, we proposed amendments to Rule 10b-18, Regulations S-K and S-B, Forms 10-Q, 10-QSB, 10-K, 10-KSB, 20-F, and N-CSR,<sup>1</sup> which would:

- Modify the definition of a “Rule 10b-18 purchase” to incorporate the current “Rule 10b-18 bid” definition;
- Clarify the scope of the exclusion for purchases effected “pursuant to a merger, acquisition, or similar transaction involving a recapitalization”;
- Modify the timing condition by applying an average daily trading volume (ADTV) value and public float value test to determine when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor;
- Apply a uniform price condition that limits issuers to purchasing their securities at a price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher;
- Modify the volume condition’s treatment of block purchases by including block purchases in calculating a security’s ADTV and the 25% volume limitation;
- Apply an alternative volume condition (applicable only during the trading session immediately following a

market-wide trading suspension), which would increase the 25% volume limitation to 100%; and

- Amend Regulations S-K and S-B, and Forms 10-Q, 10-QSB, 10-K, 10-KSB, and 20-F under the Exchange Act, and Form N-CSR under the Exchange Act and the Investment Company Act, to require disclosure of all issuer repurchases (open market and private transactions) of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b-18.

We received letters from 43 commenters in response to the Proposing Release.<sup>2</sup> The commenters expressed strong support for the proposed amendments to update and simplify the language of Rule 10b-18, to expand the safe harbor to allow issuers<sup>3</sup> whose securities are less susceptible to manipulation to stay in the market longer, and to repurchase a greater amount of shares during periods of severe market decline. Most of the commenters also supported the proposal to require periodic disclosure of issuer repurchases. However, commenters generally opposed the proposal to eliminate the “block exception” from the Rule’s volume condition, as well as the proposal to exclude from the safe harbor repurchases made following the announcement of a merger, acquisition, or similar transaction involving a recapitalization, until completion of the transaction (the “merger exclusion”).

After considering the comments received, and upon thorough examination of current market practices and the purposes underlying the safe harbor, we are adopting the amendments substantially as proposed, but with some modifications to clarify provisions or to address commenters’ concerns (particularly with respect to the “block exception” and the “merger exclusion”), as discussed below. In response to comments received, we also are adopting an amendment that will extend the safe harbor for certain issuer repurchases effected during after-hours trading sessions.

<sup>2</sup> Comment letters were received from, among others, 21 issuers, eight professional associations, five law firms, three broker-dealers, and two asset/investment management companies. The comment letters and a summary of comments prepared by the Division of Market Regulation have been placed in Public File No. S7-50-02, which are available for public inspection in the Commission’s Public Reference Room and at <http://www.sec.gov>.

<sup>3</sup> The safe harbor is also available for “affiliated purchasers” of the issuer. In this Release, the term “issuer” includes affiliated purchasers.

<sup>1</sup> Securities Exchange Act Release No. 46980 (December 10, 2002), 67 FR 77594 (December 18, 2002) (Proposing Release).