

DAVIS POLK & WARDWELL

Date: September 3, 2008
To: Interested Persons
Re: Shelf Registration Statements Begin to Expire in December

December 1, 2008 will mark the three-year anniversary of the effective date of the SEC's Securities Offering Reform. Accordingly, shelf registration statements in effect prior to December 1, 2005 (the effective date of Securities Offering Reform) will expire on December 1, 2008. Shelf registration statements that became effective shortly after December 1, 2005 are also approaching their three-year anniversary and expiration.

Securities Act Rule 415(a)(5), adopted as part of Securities Offering Reform, provides that most shelf registration statements may only be used for three years after the initial effective date of the registration statement. Transition rules issued in connection with Securities Offering Reform provide that:

- The three-year period began to run on December 1, 2005 for shelf registration statements that became effective prior to December 1, 2005, regardless of the length of time the registration statement had been in effect as of that date.
- For shelf registration statements that became effective on or after December 1, 2005, the three-year period began to run as of the effective date of the registration statement.

What to do now

Issuers with expiring shelves will need to file new shelf registration statements. Under Securities Act Rule 457, unused fees may be carried forward provided the new shelf registration statement is filed within five years of the initial filing date of the earlier shelf registration statement and an appropriate notation is made on the cover of the new registration statement.

Automatic shelf registration statements filed by eligible well-known seasoned issuers (WKSIs) will be automatically effective upon filing. In the case of shelf registration statements that are not automatically effective, as long as the new shelf registration statement is filed within three years of the original effective date of the old registration statement, the issuer may continue to offer and sell securities using the old registration statement until the earlier of the effective date of the new registration statement or six months after the third anniversary of the initial effective date of the old registration statement. In addition, a continuous offering of securities covered by the

prior registration statement (for example, pursuant to a medium-term note program) that is commenced within three years of the initial effective date of the old registration statement may continue until the effective date of the new registration statement if the offering is permitted under the new registration statement.

Exceptions

Certain types of shelf registration statements, such as those of employee benefit plans on Form S-8 and those used to register securities offered and sold by shareholders of the issuer or securities issued upon conversion of other outstanding securities, are not subject to the three-year limit. We would be happy to discuss these exceptions with you further if you are uncertain as to whether the three-year limit applies to your existing shelf registration statement.

If you have any questions regarding this memorandum, please call your regular Davis Polk contact.

© 2008 Davis Polk & Wardwell