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**“Reporting Issuer” Definition in Rule 144
Proposed to be Amended to Require XBRL Submissions**

In May 2008, the SEC proposed rules which, when adopted, will make mandatory the requirement that financial information be electronically submitted in XBRL format.¹ The proposed rules would phase in the requirement as follows:

- (i) domestic and foreign large accelerated filers using U.S. GAAP and having a worldwide public float of more than \$5 billion, must comply for fiscal years ending on or after December 15, 2008;
- (ii) all other domestic and foreign large accelerated filers using U.S. GAAP must comply for fiscal years ending on or after December 15, 2009; and
- (iii) all remaining filers using U.S. GAAP, including smaller reporting companies, and all foreign private issuers that prepare their financial statements in accordance with International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), must comply for fiscal years ending on or after December 15, 2010.

Included in the proposed rules is an addition to the term “reporting issuers” as used in Rule 144. The added clause would require that to qualify as a “reporting issuer,” an issuer must have submitted electronically and posted on its website, if any, all Interactive Data Files² required to be submitted. Thus, in order for restricted securities to be sold under the shorter six-month holding period available under Rule 144 in the case of securities issued by reporting issuers, one would have to confirm that the issuer in question had made the XBRL submissions and postings required of it, in addition to having made required Exchange Act report filings.

¹ Release Nos. 33-8924; 34-57896; 39-2455; IC-28293; File No. S7-11-08, *Interactive Data to Improve Financial Reporting* (May 30, 2008), available at: <http://www.sec.gov/rules/proposed/2008/33-8924.pdf>

² The term “Interactive Data File” is proposed to be added to Regulation S-T Rule 11 and refers to machine-readable computer code that presents information in eXtensible Business Reporting Language (“XBRL”) in electronic format in accordance with Rule 405 of Regulation S-T.

The text of the proposed amended definition is as follows (proposed language is bold face, under-scored):

“§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

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(c) * * *

(1) Reporting issuers. The issuer is, and has been for a period of at least 90 days immediately before the sale, subject to the reporting requirements of section 13 or 15(d) of the Exchange Act, has filed all required reports under section 13 or 15(d) of the Exchange Act, as applicable, **and has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File (§232.11 of this chapter) required to be submitted and posted under either Item 601(b)(101) of Regulation S-K (§229.601(b)(101) of this chapter) or Item 101 of the Instructions as to Exhibits of Form 20-F (§249.220f of this chapter)**, during the 12 months preceding such sale (or for such shorter period that the issuer was required to file such reports), other than form 8-K reports (§249.308 of this chapter); or”

The requirement to submit Interactive Data Files is proposed to be added by amending Regulation S-K Item 601 to add an Exhibit 101³.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at (212) 701-3403 or cgilman@cahill.com; Jon Mark at (212) 701-3100 or jmark@cahill.com; John Schuster at (212) 701-3323 or jschuster@cahill.com.

³ An Interactive Data File is not deemed filed or part of a registration state or prospectus for purposes of Sections 11 and 12 of the Securities Act, is not deemed filed for purposes of Section 18 of the Exchange Act and Section 34(b) of the Investment Company Act and is not subject to liability under these sections. Other than as noted, such information is subject to liability for the substantive content of the financial and other disclosures under the Federal securities laws and the rules and regulations thereunder. Note however, that a new defined term, “Interactive Data in Viewable Form,” refers more narrowly to financial statements, financial statement schedules and financial statement footnotes, which information remains subject to liability under the Federal securities laws, and the rules and regulations thereunder, in the same way and to the same extent as Securities Act, Exchange Act, Trust Indenture Act and Investment Company Act filings (each referred to as a “Related Official Filing”). In other words, such financial information is not relieved of such liability simply by virtue of being filed in XBRL format as part of an Interactive Data File. See Regulation S-T proposed amendment to Rule 11 and proposed Rule 406.