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## Legal Updates & News

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#### SEC Grants No-Action Relief for Those Seeking to Aggregate Transaction Reporting under Section 16

(a)

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The SEC's Office of Chief Counsel, Division of Corporation Finance, issued a no-action letter on June 25, 2008, granting relief to Section 16(a) reporting persons that wish to aggregate reporting of qualifying same-day, same-way open market transactions on Form 4 and Form 5 under Section 16 (a) of the Securities Exchange Act of 1934. The no-action letter can be found at: <http://www.sec.gov/divisions/corpfin/cf-noaction/2008/scsgp062508-sec16.htm>.

The no-action letter reverses the Staff's prior position, which required reporting persons to enter each sale or purchase transaction on a separate line of the applicable form. In connection with issuing the no-action letter, the Staff deleted its prior position from the *Compliance and Disclosure Interpretations* (formerly, interpretation number 133.08).

As brokers frequently execute market orders in small increments throughout the day and report trade prices to four decimal points, a reporting person's single investment decision can result in numerous reportable transactions. For example, a single sale order of 5,000 shares might be comprised of 60 separate sale transactions of fewer than 100 shares each at prices differing by pennies. Since each form is limited to 30 lines per table, a single market order could require the preparation and filing of multiple Forms 4 or Forms 5. In addition to being cumbersome, reporting in this manner is confusing to investors who could interpret the form as reporting 60 separate transactions representing multiple investment decisions made by the reporting person, as opposed to only one.

Pursuant to the relief granted in the no-action letter, a reporting person can now aggregate all same-day, same-way open market purchases or sales on a single line of the applicable form so long as the price of each transaction falls within a price range of \$1. This change simplifies and clarifies the process for both filers and investors. Aggregate reporting will be permitted if the following information is included on the applicable form:

- In the price column, the weighted average purchase or sale price for the transactions reported on that line;
- In a footnote, the range of prices for the transactions reported on that line; and
- In a footnote, an undertaking that the reporting person will supply the Staff, the issuer, or a security holder of the issuer, full information regarding the number of shares purchased or sold at each separate price.

Should a broker's execution of a market order span a range of prices greater than \$1, a reporting person would still be able to aggregate the transactions on multiple lines, so long as each line reports a series of sales or purchases that fall within the \$1 range. For example, if on the same day there are 10 sales transactions of 500 shares with sales prices ranging from \$1.05 to \$2.04 per share and 20 sales transactions of 1,000 shares with sales prices ranging from \$2.10 to \$3.05 per share, the transactions can be reported on two separate lines with the first 10 trades aggregated on one line and the remaining 20 trades on a second. The weighted average sales price for each set of trades would need to be reported in the price column for each line.

The relief granted in the no-action letter is limited to open market purchases or sales transactions reported using General Transaction Code "P" (for purchases) and "S" (for sales) and does not extend to transactions that involve a combination of either direct and indirect forms of beneficial ownership or different forms of indirect beneficial ownership. It should be noted that any reporting person that intends to rely on the relief granted in the no-action letter will need to maintain copies of the detailed sale and purchase information for each trade (e.g., the number of shares purchased or sold at each separate price).